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CHAPTER 1

ADMINISTRATION OF PUBLIC HEALTH LAWS

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(Terminated. Sec. 8, Ch. 323, L. 1995)

Part 1

General Provisions

50-1-101. Definitions. Unless the context indicates otherwise, in this chapter, the following definitions apply:

(1) "Communicable disease" means a disease designated communicable by the department.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

History: En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; R.C.M. 1947, 69-4102; amd. Sec. 85, Ch. 418, L. 1995; amd. Sec. 238, Ch. 546, L. 1995.

Cross-References

Tuberculosis control, Title 50, ch. 17.

Sexually transmitted diseases, Title 50, ch. 18.

50-1-102. Legal adviser to department. The attorney general is legal adviser to the department. If the county attorney fails to act and with the approval of the attorney general, the department may retain special counsel and compensate the special counsel from appropriations to the department.

History: En. Sec. 11, Ch. 197, L. 1967; amd. Sec. 32, Ch. 349, L. 1974; amd. Sec. 2, Ch. 288, L. 1977; R.C.M. 1947, 69-4111(part); amd. Sec. 239, Ch. 546, L. 1995.

Cross-References

Duties of Attorney General, 2-15-501.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

50-1-103. Enforcement of public health laws. (1) Either the county attorney of a county where a cause of action arises or the department may bring an action necessary to abate, restrain, or prosecute the violation of public health laws.

(2) Except as otherwise provided in the public health laws administered by the department, the department may, through the attorney general or appropriate county attorney, sue in district court to enjoin any violation of the public health laws, rules, or orders adopted or issued under the public health laws administered by the department.

History: En. Sec. 11, Ch. 197, L. 1967; amd. Sec. 32, Ch. 349, L. 1974; amd. Sec. 2, Ch. 288, L. 1977; R.C.M. 1947, 69-4111(part); amd. Sec. 240, Ch. 546, L. 1995.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Injunctions, Rule 65, M.R.Civ. P. (see Title 25, ch. 20); Title 27, ch. 19.

50-1-104. General penalty. Anyone who violates a rule adopted by the department for which a penalty is not specified is guilty of a misdemeanor.

History: En. Sec. 221, Ch. 197, L. 1967; amd. Sec. 82, Ch. 349, L. 1974; R.C.M. 1947, 69-5701; amd. Sec. 241, Ch. 546, L. 1995.

Cross-References

Penalty when none specified, 46-18-212.

Part 2
Department

50-1-201. Repealed. Sec. 20, Ch. 378, L. 1995.

History: En. 69-4110.1 by Sec. 1, Ch. 184, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; R.C.M. 1947, 69-4110.1; amd. Sec. 21, Ch. 606, L. 1993.

50-1-202. General powers and duties. The department shall:

(1) study conditions affecting the citizens of the state by making use of birth, death, and sickness records;

(2) make investigations, disseminate information, and make recommendations for control of diseases and improvement of public health to persons, groups, or the public;

(3) at the request of the governor, administer any federal health program for which responsibilities are delegated to states;

(4) inspect and work in conjunction with custodial institutions and Montana university system units periodically as necessary and at other times on request of the governor;

(5) after each inspection made under subsection (4), submit a written report on sanitary conditions to the governor and to the director of the department of corrections or the commissioner of higher education and include recommendations for improvement in conditions if necessary;

(6) advise state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;

(7) develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;

(8) develop, adopt, and administer rules setting standards for participation in and operation of programs to protect the health of mothers and children, which rules may include programs for nutrition, family planning services, improved pregnancy outcome, and those authorized by Title X of the federal Public Health Service Act and Title V of the federal Social Security Act;

(9) conduct health education programs;

(10) provide consultation to school and local community health nurses in the performance of their duties;

(11) consult with the superintendent of public instruction on health measures for schools;

(12) develop, adopt, and administer rules setting standards for a program to provide services to children with disabilities, including standards for:

(a) diagnosis;

(b) medical, surgical, and corrective treatment;

(c) aftercare and related services; and

(d) eligibility;

(13) provide consultation to local boards of health;

(14) bring actions in court for the enforcement of the health laws and defend actions brought against the board or department;

(15) accept and expend federal funds available for public health services;

(16) have the power to use personnel of local departments of health to assist in the administration of laws relating to public health;

(17) adopt rules imposing fees for the tests and services performed by the department's laboratory. Fees should reflect the actual costs of the tests or services provided. The department may not establish fees exceeding the costs incurred in performing tests and services. All fees must be deposited in the state special revenue fund for the use of the department in performing tests and services.

(18) adopt and enforce rules regarding the definition of communicable diseases and the reporting and control of communicable diseases;

(19) adopt and enforce rules regarding the transportation of dead human bodies;

(20) adopt and enforce rules and standards concerning the issuance of licenses to laboratories that conduct analysis of public water supply systems; and

(21) adopt and enforce minimum sanitation requirements for tattooing as provided in 50-2-116, including regulation of premises, equipment, and methods of operation, solely oriented to the protection of public health and the prevention of communicable disease.

History: En. Sec. 10, Ch. 197, L. 1967; amd. Sec. 31, Ch. 349, L. 1974; amd. Sec. 1, Ch. 288, L. 1977; R.C.M. 1947, 69-4110; amd. Sec. 7, Ch. 200, L. 1979; amd. Sec. 1, Ch. 219, L. 1979; amd. Sec. 1, Ch. 230, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 1, Ch. 660, L. 1983; amd. Sec. 1, Ch. 197, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 324, L. 1995; amd. Secs. 242, 568, Ch. 546, L. 1995; amd. Sec. 5, Ch. 73, L. 1997; amd. Sec. 46, Ch. 472, L. 1997.

Compiler's Comments

1999 Amendment Void: The amendment to this section made by Ch. 508, L. 1999, was rendered void by sec. 12, Ch. 508, L. 1999, a contingent voidness section.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Fund structure, Title 17, ch. 2.

Montana University System, Title 20, ch. 25.

Policy to protect children from abuse, 41-3-101.

Local boards of health, Title 50, ch. 2, part 1.

One-step licensing — inspection by other Department, Title 50, ch. 8.

Departmental duties for control of tuberculosis, 50-17-103.

General administration of Department of Corrections, Title 53, ch. 1, part 2.

50-1-203. Public health inspections. (1) The department may make public health inspections of schoolhouses, churches, theaters, jails, and other buildings or facilities where persons assemble. If public health deficiencies are found in the facility, the department may direct that conditions be corrected within a reasonable time.

(2) Either the department or a local board of health may bring an action, including an action for injunctive relief, to correct the public health deficiencies.

History: En. Sec. 18, Ch. 197, L. 1967; amd. Sec. 1, Ch. 336, L. 1971; amd. Sec. 108, Ch. 349, L. 1974; R.C.M. 1947, 69-4118; amd. Sec. 1, Ch. 383, L. 1995.

Compiler's Comments

1999 Amendment Void: The amendment to this section made by Ch. 508, L. 1999, was rendered void by sec. 12, Ch. 508, L. 1999, a contingent voidness section.

Cross-References

Nuisances, Title 27, ch. 30.

50-1-204. Quarantine measures. The department may adopt and enforce quarantine measures against a state, county, or municipality to prevent the spread of communicable disease. A person who does not comply with quarantine measures shall, on conviction, be fined not less than $10 or more than $100. Receipts from fines, except justice's court fines, shall be deposited in the state general fund.

History: En. Sec. 12, Ch. 197, L. 1967; amd. Sec. 33, Ch. 349, L. 1974; R.C.M. 1947, 69-4112; amd. Sec. 33, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Municipal power to establish detention hospital to prevent spread of disease, 7-34-4101.

Fund structure, Title 17, ch. 2.

50-1-205. Repealed. Sec. 2, Ch. 219, L. 1979.

History: En. Sec. 92, Ch. 197, L. 1967; R.C.M. 1947, 69-4515.

50-1-206. Regulation of schools in matters of health. (1) The department shall adopt regulations prescribing the requirements for school sites, water supply, sewage and waste disposal, and any other matters pertinent to the health and physical well-being of the pupils, teachers, and others who frequent schools.

(2) The department shall furnish to the districts copies of such regulations.

History: En. 75-8207 by Sec. 479, Ch. 5, L. 1971; amd. Sec. 12, Ch. 504, L. 1977; R.C.M. 1947, 75-8207.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Compliance with local health regulations required of nonpublic schools, 20-5-109.

School children to be immunized against communicable diseases, Title 20, ch. 5, part 4.

Trustees of community college district to comply with health provisions, 20-15-404.

Certification required for day-care center licensing, 52-2-722.

50-1-207 through 50-1-209 reserved.

50-1-210. Licensing of laboratories. (1) To authorize a laboratory to submit analyses and reports to the department of environmental quality under Title 75, chapter 6, part 1, the department shall issue a license to any laboratory that intends to conduct analysis of public water supply systems and that files a license application, on a form furnished by the department, demonstrating that it meets the criteria for licensing established by department rules.

(2) A person aggrieved by a decision of the department to grant, deny, or revoke a license may appeal the decision under the contested case provisions of the Montana Administrative Procedure Act.

History: En. Sec. 12, Ch. 73, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Contested case procedure, Title 2, ch. 4, part 6.

Part 3
Board
(Repealed. Sec. 567, Ch. 546, L. 1995)

Part Compiler's Comments

Histories of Repealed Sections:

50-1-301. En. Sec. 6, Ch. 197, L. 1967; amd. Sec. 28, Ch. 93, L. 1969; amd. Sec. 30, Ch. 349, L. 1974; R.C.M. 1947, 69-4106.

50-1-302. En. Sec. 4, Ch. 197, L. 1967; amd. Sec. 29, Ch. 349, L. 1974; R.C.M. 1947, 69-4104.

Part 4
Montana Public Health Improvement Task Force
(Terminated. Sec. 8, Ch. 323, L. 1995)

Part Compiler's Comments

Histories of Terminated Sections:

50-1-401. En. Sec. 1, Ch. 323, L. 1995.
50-1-402. En. Sec. 2, Ch. 323, L. 1995.
50-1-403. En. Sec. 3, Ch. 323, L. 1995.
50-1-404. En. Sec. 4, Ch. 323, L. 1995.
50-1-405. En. Sec. 5, Ch. 323, L. 1995.
50-1-406. En. Sec. 6, Ch. 323, L. 1995.

CHAPTER 2

LOCAL BOARDS OF HEALTH

Part 1 — General Provisions

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50-2-130. Local regulations no more stringent than state regulations or guidelines.

Part 1
General Provisions

50-2-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Communicable disease" means a disease designated as communicable by the department.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Institutional control" means a legal or regulatory mechanism designed to protect public health and safety or the environment that:

(a) limits access to or limits or conditions the use of environmentally contaminated property or media;

(b) provides for the protection or preservation of environmental cleanup measures; or

(c) informs the public that property is or may be environmentally impaired or that there are limitations on the access to or use of environmentally contaminated properties or media.

(4) "Local board" means a county, city, city-county, or district board of health.

(5) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

(6) "Physician" means a physician legally authorized to practice medicine in this state.

History: (1), (2)En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; (3) thru (5)En. Sec. 78, Ch. 197, L. 1967; Sec. 69-4501, R.C.M. 1947; R.C.M. 1947, 69-4102(2), (3), 69-4501; amd. Sec. 87, Ch. 418, L. 1995; amd. Sec. 243, Ch. 546, L. 1995; amd. Sec. 1, Ch. 137, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 137 inserted definition of institutional control; and made minor changes in style. Amendment effective March 23, 1999.

Cross-References

County Board of Health in city-county consolidation, 7-3-1347.

Municipal Board of Health, 7-31-4101.

Licensing of physicians, Title 37, ch. 3.

Tuberculosis control, Title 50, ch. 17.

Sexually transmitted diseases, Title 50, ch. 18.

50-2-102. Repealed. Sec. 9, Ch. 200, L. 1979.

History: En. Sec. 79, Ch. 197, L. 1967; amd. Sec. 54, Ch. 349, L. 1974; R.C.M. 1947, 69-4502.

50-2-103. Federal funds. The department may accept funds for public health from an agency of the federal government or from any other agency or person and allocate funds to local boards.

History: En. Sec. 80, Ch. 197, L. 1967; amd. Sec. 55, Ch. 349, L. 1974; R.C.M. 1947, 69-4503.

50-2-104. County boards of health. (1) There is a county board of health in each county consisting of:

(a) the county commissioners and two members who are appointed by the county commissioners and serve at their pleasure; or

(b) a minimum of five persons who are appointed by the county commissioners and serve at their pleasure.

(2) Terms of appointed members must be staggered and be for 3 years each.

(3) The county commissioners shall establish the staggered order of terms and all rules necessary to establish and maintain the board.

History: En. Sec. 81, Ch. 197, L. 1967; amd. Sec. 1, Ch. 216, L. 1969; amd. Sec. 20, Ch. 187, L. 1977; R.C.M. 1947, 69-4504; amd. Sec. 1, Ch. 163, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 163 at beginning of (1)(b) before "five persons" inserted "a minimum of"; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

County Board of Health in city-county consolidation, 7-3-1347.

Department to pay Health Board for inspections, 50-50-305, 50-51-303, 50-52-302.

50-2-105. City boards of health. (1) There is a city board of health in each first- and second-class city consisting of five persons who are appointed by the governing body of the city and serve at its pleasure.

(2) Terms of appointed members shall be staggered and shall be for 3 years each.

(3) The governing body of the city shall establish the staggered order of terms and all regulations necessary to establish and maintain the board.

History: En. Sec. 82, Ch. 197, L. 1967; amd. Sec. 2, Ch. 216, L. 1969; R.C.M. 1947, 69-4505.

Cross-References

County Board of Health in city-county consolidation, 7-3-1347.

Power to establish municipal Board of Health and to prescribe its powers and duties, 7-31-4101.

50-2-106. City-county boards of health. (1) By mutual agreement between the county commissioners and the governing body of the city or cities, the county and a city or cities may form a city-county board of health.

(2) A city-county board of health consists of:

(a) one person appointed by the county commissioners who serves at their pleasure;

(b) one person appointed by the governing body of each city that participates in the city-county board who serves at the pleasure of the appointing governing body;

(c) additional members appointed by the county commissioners and governing body or bodies of the city or cities participating in the city-county board as mutually agreed upon who serve at the pleasure of the appointing commissioners or governing body.

(3) The board must be composed of at least five persons. Terms of appointed members must be staggered and must be for 3 years each.

(4) By mutual agreement between the county commissioners and the governing body of the city or cities, they shall establish the staggered order of terms and all regulations necessary to establish and maintain the board.

History: En. Sec. 83, Ch. 197, L. 1967; amd. Sec. 3, Ch. 216, L. 1969; R.C.M. 1947, 69-4506; amd. Sec. 1, Ch. 47, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 47 in (1) after "governing body of the city" inserted "or cities" and after "county and a" deleted "first- or second-class"; in (4) near middle after "governing body of the city" inserted "or cities"; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

County Board of Health in city-county consolidation, 7-3-1347.

Interlocal agreements, Title 7, ch. 11, part 1.

Municipal Board of Health, 7-31-4101.

Department to pay Health Board for inspections, 50-50-305, 50-51-303, 50-52-302.

50-2-107. District boards of health. (1) By mutual agreement, two or more adjacent counties may unite to create a district board of health. First- and second-class cities located in those counties may elect to be included in the district.

(2) A district board of health consists of:

(a) one person appointed by the county commissioners of each county in the district who serves at the pleasure of the appointing commissioners;

(b) one person appointed by the governing body of each city that elects to be included in the district who serves at the pleasure of the appointing governing body;

(c) additional members appointed by the county commissioners of each county that participates in the district board as mutually agreed upon who serve at the pleasure of the appointing commissioners.

History: En. Sec. 84, Ch. 197, L. 1967; R.C.M. 1947, 69-4507.

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

Department to pay Health Board for inspections, 50-50-305, 50-51-303, 50-52-302.

50-2-108. Financing of local boards — inspection fund. (1) Local boards are financed by general fund appropriations, special levy appropriations, state and federal funds available, and contributions from school boards and other official and nonofficial agencies.

(2) There is within the state special revenue fund a local board inspection fund account.

History: En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(1); (2)En. Sec. 4, Ch. 336, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

Cross-References

Fund structure, Title 17, ch. 2.

Source of account funding, 50-50-205, 50-51-204, 50-52-202.

Deposit of funds received from Department for inspections, 50-50-305, 50-51-303, 50-52-302.

Use of inspection fund account, 50-50-305, 50-51-303, 50-52-302.

50-2-109. County board appropriations. County boards are financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, part 23.

History: En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(2)(a).

Cross-References

Deposit of funds received from Department for inspections, 50-50-305, 50-51-303, 50-52-302.

50-2-110. City board appropriations. City boards are financed by an appropriation from the general fund of the city after approval of a budget in the way provided for other city offices and departments under Title 7, chapter 6, part 42.

History: En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(2)(b).

Cross-References

Property tax exemptions, Art. VIII, sec. 5, Mont. Const.

Deposit of funds received from Department for inspections, 50-50-305, 50-51-303, 50-52-302.

50-2-111. City-county board appropriations. If a city-county board is created, it is financed by one of the following methods:

(1) (a) The county commissioners and governing body of each participating city may mutually agree upon the division of expenses.

(b) The county's part of the total expenses is financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, part 23.

(c) Each participating city's part of the total expenses is financed by an appropriation from the general fund of the city after approval of a budget in the way provided for other city offices and departments under Title 7, chapter 6, part 42.

(d) All money must be deposited with the county treasurer who shall disburse the money as county funds.

(2) (a) The county commissioners and governing body of each participating city may mutually agree upon the division of the expenses.

(b) Subject to 15-10-420, the county's part of the total expenses is financed by a special levy of not more than 5 mills on the taxable valuation of all property outside the incorporated limits of each participating city after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, part 23. If the 5-mill levy is not sufficient to fund the county's share, the county commissioners may supplement it with an appropriation from the county general fund.

(c) Subject to 15-10-420, each participating city's part of the total expenses is financed by a special levy of not more than 5 mills on the taxable valuation of all property within the incorporated limits of the city after approval of a budget in the way provided for other city offices and departments under Title 7, chapter 6, part 42.

(d) All money must be deposited with the county treasurer who shall disburse the money as county funds.

(e) The special levies authorized by this subsection are in addition to all other levies authorized by law.

History: En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(2)(c); amd. Sec. 1, Ch. 83, L. 1997; amd. Sec. 127, Ch. 584, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 584 in (2)(b) and (2)(c) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Cross-References

County budget law, Title 7, ch. 6, part 23.

Municipal budget law, Title 7, ch. 6, part 42.

Deposit of funds received from Department for inspections, 50-50-305, 50-51-303, 50-52-302.

50-2-112. District board appropriations. (1) District boards are financed by appropriations from the general funds of each county in the district in proportion to the population in each county.

(2) First- and second-class cities which elect to be included in the district contribute to the county in which they are located in the way provided for city-county boards under 50-2-111.

(3) All funds shall be deposited with the county treasurer of one of the counties as agreed upon by the commissioners of the counties in the district. The county treasurer shall disburse the funds as county funds.

History: En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(2)(d).

Cross-References

Deposit of funds received from Department for inspections, 50-50-305, 50-51-303, 50-52-302.

50-2-113. Contributions by school boards and other agencies authorized. School boards and other official and nonofficial agencies may contribute funds to a local board.

History: En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(3).

Cross-References

School district trustees, Art. X, sec. 8, Mont. Const.; Title 20, ch. 3, part 3.

Deposit of funds received from Department for inspections, 50-50-305, 50-51-303, 50-52-302.

50-2-114. Special mill levy. Subject to 15-10-420, if the general fund of a city or county is not sufficient to meet the approved budget, a levy of not more than 1 mill may be made on the taxable valuation of all property in the city or county in addition to all other levies authorized by law. This section does not apply when the board has been financed under 50-2-111(2).

History: En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(4); amd. Sec. 128, Ch. 584, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 584 at beginning inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Cross-References

Property tax exemptions, Art. VIII, sec. 5, Mont. Const.

County budget law, Title 7, ch. 6, part 23.

Municipal budget law, Title 7, ch. 6, part 42.

Deposit of funds received from Department for inspections, 50-50-305, 50-51-303, 50-52-302.

50-2-115. Legal adviser to local boards. The county attorney shall serve as legal adviser to local boards as established by 50-2-104 and 50-2-106. The county attorney shall represent the local board in those matters relating to the functions, powers, and duties of local boards.

History: En. 69-4508.1 by Sec. 1, Ch. 273, L. 1975; R.C.M. 1947, 69-4508.1.

Cross-References

Office of County Attorney, Title 7, ch. 4, part 27.

50-2-116. Powers and duties of local boards. (1) Local boards shall:

(a) appoint a local health officer who is a physician or a person with a master's degree in public health or the equivalent and with appropriate experience, as determined by the department, and shall fix the health officer's salary;

(b) elect a presiding officer and other necessary officers;

(c) employ necessary qualified staff;

(d) adopt bylaws to govern meetings;

(e) hold regular meetings quarterly and hold special meetings as necessary;

(f) supervise destruction and removal of all sources of filth that cause disease;

(g) guard against the introduction of communicable disease;

(h) supervise inspections of public establishments for sanitary conditions;

(i) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent than state standards for the control and disposal of sewage from private and public buildings that is not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the board of environmental review and must provide for appeal of variance decisions to the department as required by 75-5-305.

(2) Local boards may:

(a) quarantine persons who have communicable diseases;

(b) require isolation of persons or things that are infected with communicable diseases;

(c) furnish treatment for persons who have communicable diseases;

(d) prohibit the use of places that are infected with communicable diseases;

(e) require and provide means for disinfecting places that are infected with communicable diseases;

(f) accept and spend funds received from a federal agency, the state, a school district, or other persons;

(g) contract with another local board for all or a part of local health services;

(h) reimburse local health officers for necessary expenses incurred in official duties;

(i) abate nuisances affecting public health and safety or bring action necessary to restrain the violation of public health laws or rules;

(j) adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings. The fees must be deposited with the county treasurer.

(k) adopt rules that do not conflict with rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth that might cause disease or adversely affect public health;

(iii) subject to the provisions of 50-2-130, on sanitation in public buildings that affects public health;

(iv) for heating, ventilation, water supply, and waste disposal in public accommodations that might endanger human lives;

(v) subject to the provisions of 50-2-130, for the maintenance of sewage treatment systems that do not discharge an effluent directly into state waters and that are not required to have an operating permit as required by rules adopted under 75-5-401; and

(vi) for the regulation, as necessary, of the practice of tattooing, which may include registering tattoo artists, inspecting tattoo establishments, adopting fees, and also adopting sanitation standards that are not less stringent than standards adopted by the department pursuant to 50-1-202. For the purposes of this subsection, "tattoo" means making permanent marks on the skin by puncturing the skin and inserting indelible colors.

(l) adopt regulations for the establishment of institutional controls that have been selected or approved by the:

(i) United States environmental protection agency as part of a remedy for a facility under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.; or

(ii) department of environmental quality as part of a remedy for a facility under the Montana Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7.

History: En. Sec. 86, Ch. 197, L. 1967; amd. Sec. 4, Ch. 216, L. 1969; amd. Sec. 1, Ch. 196, L. 1971; amd. Secs. 108, 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 273, L. 1975; R.C.M. 1947, 69-4509; amd. Sec. 1, Ch. 709, L. 1985; amd. Sec. 2, Ch. 479, L. 1991; amd. Sec. 2, Ch. 324, L. 1995; amd. Sec. 88, Ch. 418, L. 1995; amd. Sec. 6, Ch. 471, L. 1995; amd. Sec. 2, Ch. 137, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 137 inserted (2)(l) providing for adoption of regulations for establishment of institutional controls; and made minor changes in style. Amendment effective March 23, 1999.

Cross-References

Nuisances, Title 27, ch. 30.

Exemptions from requirements for sanitarians, 37-40-102.

Tuberculosis control, Title 50, ch. 17.

Sexually transmitted diseases, Title 50, ch. 18.

50-2-117. Appointment of local health officer by department when not made by local health board. (1) If a local health board does not appoint a health officer, the department may appoint a health officer 30 days after notification in writing has been given to the local health board.

(2) A health officer appointed by the department has the same authority as a health officer appointed by a local health board.

History: En. Sec. 88, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; R.C.M. 1947, 69-4511; amd. Sec. 1, Ch. 101, L. 1983.

50-2-118. Powers and duties of local health officers. (1) Local health officers or their authorized representatives shall:

(a) make inspections for sanitary conditions;

(b) as directed by the local board, issue written orders for the destruction and removal of filth which might cause disease;

(c) with written approval of the department, order buildings or facilities where people congregate closed during epidemics;

(d) on forms provided by the department, report communicable diseases to the department each week;

(e) before the first day of January, April, July, and October, give a report to the local board of sanitary conditions in the county, city, city-county, or district, together with a detailed account of his activities, on forms and containing information required by the department;

(f) before the 10th day after the report is given to the local board, send a copy of the report required by subsection (1)(e) of this section to the department;

(g) as prescribed by rules adopted by the department, establish and maintain quarantines;

(h) as prescribed by rules adopted by the department, supervise the disinfection of places at the expense of the local board when a period of quarantine ends;

(i) notify the department of his appointment and changes in membership of the local board;

(j) file a complaint with the appropriate court if this chapter or rules adopted by the local board or state department under this chapter are violated;

(k) validate state licenses issued by the department in accordance with chapters 50 through 53 of this title.

(2) With approval of the department, local health officers may forbid persons to assemble in a place if the assembly endangers public health.

(3) A local health officer who is a physician may be placed in charge of a communicable disease hospital, but a local health officer who is a physician is not required to act as a physician to the indigent.

(4) A local health officer who is not a physician shall not act as a physician to anyone.

History: En. Sec. 87, Ch. 197, L. 1967; amd. Sec. 2, Ch. 196, L. 1971; amd. Sec. 56, Ch. 349, L. 1974; R.C.M. 1947, 69-4510; amd. Sec. 1, Ch. 200, L. 1979; amd. Sec. 18, Ch. 708, L. 1991.

Compiler's Comments

1999 Amendment Void: The amendment to this section made by Ch. 508, L. 1999, was rendered void by sec. 12, Ch. 508, L. 1999, a contingent voidness section.

Cross-References

City-county director's powers and duties, 7-3-1346.

Tuberculosis control, Title 50, ch. 17.

Sexually transmitted diseases, Title 50, ch. 18.

50-2-119. Nursing services. (1) A local board may employ a qualified nurse for nursing services to persons under a physician's care who are confined to their homes.

(2) Before nursing services are provided, a physician must:

(a) determine that the person needs the services of a visiting nurse;

(b) direct the nurse to visit the person;

(c) specify the type and duration of services to be performed by the nurse.

(3) Persons shall pay for the services at rates set by the local board. Local boards, on behalf of persons receiving services, may accept payment from persons or public agencies either directly from or by contract with the person or agency. All payments received shall be deposited in a special county or city fund and used to defray expenses of providing the service.

History: En. Sec. 89, Ch. 197, L. 1967; R.C.M. 1947, 69-4512.

Cross-References

Licensing of nurses, Title 37, ch. 8.

50-2-120. Assistance from law enforcement officials. A state or local health officer may request a sheriff, constable, or other peace officer to assist him in carrying out the provisions of this chapter. If the officer does not render the service, he is guilty of a misdemeanor and may be removed from office.

History: En. Sec. 90, Ch. 197, L. 1967; R.C.M. 1947, 69-4513; amd. Sec. 1, Ch. 37, L. 1979.

Cross-References

Local government law enforcement, Title 7, ch. 32.

Penalty when none specified, 46-18-212.

50-2-121. Removal of diseased prisoner from jail by local health officer. (1) On written order of a local health officer, a diseased prisoner who is held in a jail and who is considered dangerous to the health of other prisoners may be removed to a hospital or other place of safety.

(2) If the prisoner was committed to jail by order of court, the order for removal and treatment shall be signed by the local health officer and filed with the court.

(3) When the prisoner recovers from the disease, he shall be returned to the jail.

(4) A prisoner removed to a hospital or clinic for treatment shall not be considered to have committed an escape.

History: En. Sec. 93, Ch. 197, L. 1967; R.C.M. 1947, 69-4516.

Cross-References

County jails, Title 7, ch. 32, part 22.

Municipal jails, Title 7, ch. 32, part 42.

50-2-122. Obstructing local health officer in the performance of his duties unlawful. It is unlawful to:

(1) hinder a local health officer in the performance of his duties under this chapter;

(2) remove or deface any placard or notice posted by the local health officer; or

(3) violate a quarantine regulation.

History: En. Sec. 94, Ch. 197, L. 1967; R.C.M. 1947, 69-4517.

Cross-References

Obstructing peace officer or other public servant, 45-7-302.

Penalties for violations, 50-2-124.

50-2-123. Compliance order authorized. If a person refuses or neglects to comply with a written order of a state or local health officer within a reasonable time specified in the order, the state or local health officer may cause the order to be complied with and initiate an action to recover any expenses incurred from the person who refused or neglected to comply with the order. The action to recover expenses shall be brought in the name of the city or county.

History: En. Sec. 96, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; amd. Sec. 3, Ch. 273, L. 1975; R.C.M. 1947, 69-4519(1).

50-2-124. Penalties for violations. (1) A person who does not comply with rules adopted by a local board is guilty of a misdemeanor. On conviction, he shall be fined not less than $10 or more than $200.

(2) Except as provided in subsection (1) of this section and 50-2-123, a person who violates the provisions of this chapter or rules adopted by the department under the provisions of this chapter is guilty of a misdemeanor. On conviction, he shall be fined not less than $10 or more than $500, imprisoned for not more than 90 days, or both.

(3) Each day of violation constitutes a separate offense.

(4) Fines, except justice's court fines, shall be paid to the county treasurer of the county in which the violation occurs.

History: En. Sec. 96, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; amd. Sec. 3, Ch. 273, L. 1975; R.C.M. 1947, 69-4519(2) thru (4); amd. Sec. 2, Ch. 709, L. 1985; amd. Sec. 34, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

50-2-125 through 50-2-129 reserved.

50-2-130. Local regulations no more stringent than state regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (4) or unless required by state law, the local board may not adopt a rule under 50-2-116(1)(i), (2)(k)(iii), or (2)(k)(v) that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The local board may incorporate by reference comparable state regulations or guidelines.

(2) The local board may adopt a rule to implement 50-2-116(1)(i), (2)(k)(iii), or (2)(k)(v) that is more stringent than comparable state regulations or guidelines only if the local board makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local board standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the local board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a rule of the local board adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may petition the local board to review the rule. If the local board determines that the rule is more stringent than comparable state regulations or guidelines, the local board shall comply with this section by either revising the rule to conform to the state regulations

or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The local board may charge a petition filing fee in an amount not to exceed $250.

(b) A person may also petition the local board for a rule review under subsection (4)(a) if the local board adopts a rule after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted local board rule.

History: En. Sec. 4, Ch. 471, L. 1995.

CHAPTER 3

STATE FIRE PREVENTION AND INVESTIGATION PROGRAM

Part 1 — General Provisions

50-3-101. Definitions.
50-3-102. Powers and duties of department regarding state fire prevention and investigation — rules.
50-3-103. Rules promulgated by department.
50-3-104. Repealed.
50-3-105. Repealed.
50-3-106. Appointment of special fire inspectors.
50-3-107. Repealed.
50-3-108. Repealed.
50-3-109. Tax on fire insurance premiums.

Part 1

General Provisions

Part Cross-References

Local government fire protection, Title 7, ch. 33.

Fire hazards, Title 50, ch. 62, part 1.

50-3-101. Definitions. In this chapter, "department" means the department of justice and "fire prevention and investigation program" means the state fire prevention and investigation program of the department of justice provided for in 2-15-2005.

History: En. 50-3-101 by Code Commissioner, 1979; amd. Sec. 5, Ch. 706, L. 1991.

50-3-102. Powers and duties of department regarding state fire prevention and investigation — rules. (1) For the purpose of reducing the state's fire loss, the department shall:

(a) inspect each unit of the Montana university system and other state buildings, including state institutions, as often as its budget and other inspection duties allow, but no more frequently than once each year unless requested by the commissioner of higher education for buildings in the university system, by the department of corrections or the department of public health and human services for state institutions, or by the department of administration for all other state buildings. A copy of the inspection report for units of the university system must be given to the commissioner of higher education, a copy of the inspection report for state institutions must be given to the department of corrections and the department of public health and human services, and a copy of the inspection report for all other state buildings must be given to the department of administration. The department of justice shall advise the commissioner of higher education and the directors of the departments of corrections, public health and human services, and administration concerning fire prevention, fire protection, and public safety when it distributes the reports.

(b) inspect public, business, or industrial buildings, as provided in chapter 61, and require conformance to law and rules promulgated under the provisions of this chapter;

(c) assist local fire and law enforcement authorities in arson investigations and may initiate or supervise these investigations when, in its judgment, the initiation or supervision is necessary;

(d) provide fire prevention and fire protection information to public officials and the general public;

(e) serve as the state entity primarily responsible for promoting fire safety at the state level;

(f) encourage coordination of all services and agencies in fire prevention matters to reduce duplication and fill voids in services;

(g) establish rules concerning responsibilities and procedures to be followed when there is a threat of explosive material in a building housing state offices; and

(h) keep a record of all fires occurring in the state, the origin of the fires, and all facts, statistics, and circumstances relating to the fires that have been determined by investigations under the provisions of chapter 63. Except for statements of witnesses given during an investigation, information that may be held in confidence under 50-63-403, and criminal justice information subject to restrictions on dissemination in accordance with Title 44, chapter 5, the record must be open at all times to public inspection.

(2) The department may adopt rules necessary for safeguarding life and property from the hazards of fire and carrying into effect the fire prevention laws of this state.

(3) The department shall adopt rules based on nationally recognized standards necessary for safeguarding life and property from the hazards associated with the manufacture, transportation, storage, sale, and use of explosive materials.

(4) If necessary to safeguard life and property under rules promulgated pursuant to this section, the department may maintain an action to enjoin the use of all or a portion of a building or restrain a specific activity until there is compliance with the rules.

History: Ap. p. Sec. 1, Ch. 124, L. 1929; re-en. Sec. 2737.1, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1943; amd. Sec. 1, Ch. 278, L. 1947; amd. Sec. 93, Ch. 199, L. 1965; amd. Sec. 2, Ch. 229, L. 1967; amd. Sec. 24, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 169, L. 1975; amd. Sec. 34, Ch. 187, L. 1977; amd. Sec. 2, Ch. 519, L. 1977; Sec. 82-1202, R.C.M. 1947; (1)(k), (1)(l)En. Secs. 19, 22, Ch. 148, L. 1911; re-en. Secs. 2756, 2759, R.C.M. 1921; re-en. Secs. 2756, 2759, R.C.M. 1935; amd. Secs. 36, 37, Ch. 187, L. 1977; Secs. 82-1226, 82-1229, R.C.M. 1947; R.C.M. 1947, 82-1202(1), (2), 82-1226, 82-1229;

amd. Sec. 6, Ch. 145, L. 1979; amd. Sec. 2, Ch. 187, L. 1985; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 6, Ch. 706, L. 1991; amd. Sec. 244, Ch. 546, L. 1995.

Cross-References

Department of Justice to review provisions for protection of state-owned buildings, 2-17-112.

Local government fire protection, Title 7, ch. 33.

Injunctions, Title 27, ch. 19.

Licensing of persons using explosives in construction or demolition, Title 37, ch. 72.

State fire prevention and investigation program to set fire safety standards for day-care centers, 52-2-734.

50-3-103. Rules promulgated by department. (1) Rules promulgated by the department by authority of 50-3-102 must be reasonable and calculated to effect the purposes of this chapter. They must include but are not limited to requirements for design, construction, installation, operation, storage, handling, maintenance, or use of structural requirements for various types of construction; building restrictions within congested districts; exit facilities from structures; fire extinguishers, fire alarm systems, and fire extinguishing systems; fire emergency drills; flue and chimney construction; heating devices; electrical wiring and equipment; air conditioning, ventilating, and other duct systems; refrigeration systems; flammable liquids; oil and gas wells; application of flammable finishes; explosives, acetylene, liquefied petroleum gas, and similar products; calcium carbide and acetylene generators; flammable motion picture film; combustible fibers; hazardous chemicals or materials; rubbish; open-flame devices; parking of vehicles; dust explosions; lightning protection; storage of smokeless powder and small arms primers; and other special fire hazards.

(2) If rules relate to building and equipment standards covered by the state or a municipal building code, the rules are effective upon approval of the department of commerce and filing with the secretary of state.

(3) Federal or other nationally recognized standards for fire protection may be adopted in whole or in part by reference.

(4) Rules must be adopted as prescribed in the Montana Administrative Procedure Act.

(5) Rules promulgated by the department may not prevent the installation of an aboveground storage tank in a community, city, or town with a population of 1,500 or less if the tank is installed in conformance with all other applicable laws and regulations.

(6) Rules promulgated by the department may not require diked areas or heat-actuated or other shutoff devices for storage tanks containing class I or class II liquids, as defined in the uniform fire code, intended only for private use on farms and ranches.

(7) A person violating any rule made under the provisions of this part is guilty of a misdemeanor.

History: Ap. p. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975; Sec. 82-1202.1, R.C.M.; Ap. p. Sec. 1, Ch. 124, L. 1929; amd. Sec. 1, Ch. 18, L. 1943; amd. Sec. 1, Ch. 278, L. 1947; amd. Sec. 93, Ch. 199, L. 1965; amd. Sec. 2, Ch. 229, L. 1967; amd. Sec. 24, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 169, L. 1975; amd. Sec. 34, Ch. 187, L. 1977; amd. Sec. 2, Ch. 519, L. 1977; Sec. 82-1202, R.C.M. 1947; R.C.M. 1947, 82-1202(3), (4), 82-1202.1(1) thru (3), (5); amd. Sec. 3, Ch. 352, L. 1985; amd. Sec. 4, Ch. 506, L. 1989; amd. Sec. 7, Ch. 706, L. 1991; amd. Sec. 1, Ch. 116, L. 1997; amd. Sec. 1, Ch. 201, L. 1997.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Misdemeanor penalty when none specified, 46-18-212.

Building construction standards, Title 50, ch. 60.

Warning notice of violation required for certain storage of class I or class II liquids, 50-62-112.

State fire prevention and investigation program to adopt and enforce rules for fire safety in day-care centers, 52-2-734.

50-3-104. Repealed. Sec. 37, Ch. 706, L. 1991.

History: En. Sec. 4, Ch. 148, L. 1911; re-en. Sec. 2741, R.C.M. 1921; re-en. Sec. 2741, R.C.M. 1935; R.C.M. 1947, 82-1207.

50-3-105. Repealed. Sec. 37, Ch. 706, L. 1991.

History: En. Sec. 5, Ch. 148, L. 1911; amd. Sec. 1, Ch. 95, L. 1913; re-en. Sec. 2742, R.C.M. 1921; re-en. Sec. 2742, R.C.M. 1935; amd. Sec. 5, Ch. 229, L. 1967; amd. Sec. 1, Ch. 184, L. 1973; amd. Sec. 20, Ch. 453, L. 1977; R.C.M. 1947, 82-1208(1).

50-3-106. Appointment of special fire inspectors. (1) Special fire inspectors may be appointed to perform any function of the fire prevention and investigation program.

(2) When performing these duties or attending a training course approved by the department, special fire inspectors may be paid at a rate not to exceed $56 a day plus travel expenses as provided for in 2-18-501 through 2-18-503, as amended.

History: En. Sec. 5, Ch. 148, L. 1911; amd. Sec. 1, Ch. 95, L. 1913; re-en. Sec. 2742, R.C.M. 1921; re-en. Sec. 2742, R.C.M. 1935; amd. Sec. 5, Ch. 229, L. 1967; amd. Sec. 1, Ch. 184, L. 1973; amd. Sec. 20, Ch. 453, L. 1977; R.C.M. 1947, 82-1208(2); amd. Sec. 1, Ch. 121, L. 1979; amd. Sec. 8, Ch. 706, L. 1991.

50-3-107. Repealed. Sec. 37, Ch. 706, L. 1991.

History: En. Sec. 5, Ch. 148, L. 1911; amd. Sec. 1, Ch. 95, L. 1913; re-en. Sec. 2742, R.C.M. 1921; re-en. Sec. 2742, R.C.M. 1935; amd. Sec. 5, Ch. 229, L. 1967; amd. Sec. 1, Ch. 184, L. 1973; amd. Sec. 20, Ch. 453, L. 1977; R.C.M. 1947, 82-1208(3).

50-3-108. Repealed. Sec. 37, Ch. 706, L. 1991.

History: En. Sec. 23, Ch. 148, L. 1911; re-en. Sec. 2760, R.C.M. 1921; re-en. Sec. 2760, R.C.M. 1935; amd. Sec. 42, Ch. 177, L. 1965; R.C.M. 1947, 82-1230.

50-3-109. Tax on fire insurance premiums. (1) Each insurer authorized to effect insurance on risks enumerated in subsection (2) that is doing business in this state shall pay to the state auditor during the month of February or March in each year, in addition to the taxes on premiums required by law to be paid by it, taxes on the fire portion of the direct premiums on the enumerated risks received during the previous calendar year after deducting cancellations and return premiums. A tax of 2 ½% must be deposited in the general fund as provided in 17-2-121.

(2) The risks referred to in subsection (1) are:

(a) insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other casualty;

(b) all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether by land, water, or air;

(c) insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils;

(d) insurance of growing crops against loss or damage resulting from hail or the elements;

(e) insurance against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps, or other apparatus;

(f) insurance against loss or legal liability for loss because of damage to property caused by the use of teams or vehicles, whether by accident or collision or by explosion of any engine, tank, boiler, pipe, or tire of any vehicle; and

(g) insurance against theft of the whole or any part of a vehicle.

History: En. Sec. 24, Ch. 148, L. 1911; re-en. Sec. 2761, R.C.M. 1921; re-en. Sec. 2761, R.C.M. 1935; amd. Sec. 1, Ch. 83, L. 1941; amd. Sec. 1, Ch. 162, L. 1947; amd. Sec. 1, Ch. 182, L. 1959; amd. Sec. 1, Ch. 312, L. 1969; amd. Sec. 1, Ch. 110, L. 1971; R.C.M. 1947, 82-1231; amd. Sec. 1, Ch. 703, L. 1991; amd. Sec. 36, Ch. 532, L. 1997; amd. Sec. 79, Ch. 51, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 51 in (1) at end substituted language providing for deposit of 2 1/2% of tax in the general fund for former language that read: "The taxes are:

(a) 1% to be deposited as provided in 17-2-121; and

(b) 1 1/2% to be used for purposes of supplemental pensions"; and made minor changes in style. Amendment effective March 15, 1999.

Cross-References

State Auditor, Art. VI, sec. 1, Mont. Const.; Title 2, ch. 15, part 6.

Commissioner of Insurance, 2-15-1903.

Insurers to report premiums for tax purposes, 33-2-705.

CHAPTER 4

HEALTH CARE ADVISORY COUNCIL

Part 1 — General Provisions

50-4-101. Repealed.
50-4-102. Repealed.
50-4-103. Purpose.
50-4-104. State health care policy.

Part 2 — Administration

50-4-201. Repealed.
50-4-202. Repealed.
50-4-203. Health care advisory council.
50-4-204. Meetings.
50-4-205. Reimbursement of expenses — compensation.
50-4-206. Powers and duties — report — staff support.

Part 3 — State Health Care Reports

50-4-301 through 50-4-311. Repealed.
50-4-312. Consumer report cards.

Part 4 — Health Care Planning Regions

50-4-401. Repealed.
50-4-402. Repealed.
50-4-403. Health care planning regions.

Part 5 — Health Care Billing, Data, and Cost Management Plans

50-4-501. Repealed.
50-4-502. Health care database — information submitted.
50-4-503. Repealed.
50-4-504. Definitions.
50-4-505. Uniform claim forms and procedures.

Part 6 — Certificates of Public Advantage

50-4-601. Finding and purpose.
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50-4-603. Certificate of public advantage — standards for certification — time for action by department.
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50-4-609. Revocation of certificate by department.
50-4-610. Appeal.
50-4-611. Record of agreements to be kept.
50-4-612. Rulemaking.
50-4-613 through 50-4-620 reserved.
50-4-621. Enforcement by attorney general.
50-4-622. Reports.
50-4-623. Fees — statutory appropriation.

Part 1
General Provisions

50-4-101. Repealed. Sec. 20, Ch. 378, L. 1995.
History: En. Sec. 1, Ch. 606, L. 1993.

50-4-102. Repealed. Sec. 20, Ch. 378, L. 1995.
History: En. Sec. 2, Ch. 606, L. 1993.

50-4-103. *(Temporary)* **Purpose.** (1) The legislature and the public have recognized the continued need for evaluation and analysis of Montana's health care system. The legislature and the public support an incremental private-sector approach to health care reform with an emphasis on affordability and on access to health care. The health care advisory council is created to continue the public-private partnership in order to develop initiatives regarding health care reform to be presented to the 1997 legislature.

(2) The health care advisory council shall monitor and evaluate implementation of recent health care reform initiatives, including small group insurance reform, the development of medicaid managed care, tort reform, changes to the antitrust statutes, voluntary purchasing pools, and the efficiency of the certificate of need process. The health care advisory council shall provide reports on the progress of these reforms to the general public and to the legislature. *(Terminates June 30, 2001—sec. 3, Ch. 517, L. 1997.)*
History: En. Sec. 1, Ch. 378, L. 1995.

50-4-104. State health care policy. (1) It is the policy of the state of Montana to continue to investigate and develop strategies that result in all residents having access to quality health services at costs that are affordable.

(2) It is further the policy of the state of Montana that:

(a) Montana's health care system should ensure that care is delivered in the most effective and efficient manner possible;

(b) health promotion, preventative health services, and public health services should play a central role in the system;

(c) the patient-provider relationship should be a fundamental component of Montana's health care system;

(d) individuals should be encouraged to play a significant role in determining their health and appropriate use of the health care system;

(e) accurate and timely health care information should play a significant role in determining the individual's health and appropriate use of the health care system;

(f) whenever possible, market-based approaches should be relied on to contain the growth in health care spending while attempting to achieve expanded access, cost containment, and improved quality; and

(g) the process of health care reform in Montana should be carried out gradually and sequentially to ensure that any undesirable impacts of the state's reform policies on other aspects of the state's economy, particularly on small businesses, are minimized.

(3) The legislature recognizes the need to increase the emphasis on the education of consumers of health care services. Consumers should be educated concerning the health care system, payment for services, ultimate costs of health care services, and the benefit to consumers generally of providing only those services to the consumer that are reasonable and necessary.

(4) Sections 50-4-103, 50-4-104, 50-4-203 through 50-4-206, and 50-4-403 may not be interpreted to prevent Montana residents from seeking health care services not otherwise recommended or provided for as a result of the provisions of 50-4-103, 50-4-104, 50-4-203 through 50-4-206, and 50-4-403. *(Subsection (4) terminates June 30, 2001—sec. 3, Ch. 517, L. 1997.)*

History: En. Sec. 2, Ch. 378, L. 1995.

Part 2
Administration

50-4-201. Repealed. Sec. 20, Ch. 378, L. 1995.
History: En. Sec. 3, Ch. 606, L. 1993.

50-4-202. Repealed. Sec. 20, Ch. 378, L. 1995.
History: En. Sec. 4, Ch. 606, L. 1993.

50-4-203. *(Temporary)* **Health care advisory council.** (1) There is a health care advisory council.

(2) The health care advisory council is composed of 10 members.

(a) There are four legislative members. Two members must be selected by the president of the senate from a pool of applicants from the senate, one representing each party. Two members must be selected by the speaker of the house from a pool of applicants from the house of representatives, one representing each party.

(b) There are five members, each representing a health care planning region as provided in 50-4-403, selected by the governor from a pool of applicants.

(c) There is one member representing the executive branch of government, appointed by the governor.

(3) Legislators and members who represent health care planning regions and who want to serve on the health care advisory council shall apply to the president of the senate, speaker of the house, or governor, respectively, for a position on the council. The application must include:

(a) a statement of the reason that the person wishes to serve on the council;

(b) the experience that qualifies the person to serve; and

(c) a statement of the person's willingness to commit the substantial time required to serve on the council.

(4) The members of the health care advisory council shall elect a presiding officer from among the members.

(5) A vacancy on the health care advisory council must be filled in the same manner as the original appointment.

(6) Each member shall serve a term of 2 years. A member may not serve more than three terms. *(Terminates June 30, 2001—sec. 3, Ch. 517, L. 1997.)*

History: En. Sec. 3, Ch. 378, L. 1995; amd. Sec. 1, Ch. 517, L. 1997.

50-4-204. *(Temporary)* **Meetings.** (1) The health care advisory council may meet up to 10 times over the biennium.

(2) The council shall adopt rules of procedure for the conduct of the meetings. *(Terminates June 30, 2001—sec. 3, Ch. 517, L. 1997.)*

History: En. Sec. 4, Ch. 378, L. 1995.

50-4-205. *(Temporary)* **Reimbursement of expenses — compensation.** (1) A member of the health care advisory council who is appointed by the governor is entitled to reimbursement for expenses as provided in 2-18-501 through 2-18-503.

(2) A legislative member is entitled to compensation and expenses as provided in 5-2-302. *(Terminates June 30, 2001—sec. 3, Ch. 517, L. 1997.)*

History: En. Sec. 5, Ch. 378, L. 1995.

50-4-206. *(Temporary)* **Powers and duties — report — staff support.** (1) The health care advisory council shall study the considerations outlined in 50-4-103 and shall continue the study of solutions to the health care crisis and study methods of cost reduction in health care services and health care delivery systems.

(2) The health care advisory council shall report its findings to the governor and the legislature by October 1, 1996.

(3) The health care advisory council is the repository of all documents and materials of the Montana health care authority.

(4) The department of public health and human services shall provide staff support to the health care advisory council.

(5) The health care advisory council is attached to the department of public health and human services for administrative purposes only as provided in 2-15-121.

(6) The department of public health and human services, the commissioner of insurance, and the attorney general shall provide information to the health care advisory council as necessary. *(Terminates June 30, 2001—sec. 3, Ch. 517, L. 1997.)*

History: En. Sec. 6, Ch. 378, L. 1995.

Part 3
State Health Care Reports

50-4-301 through 50-4-311. Repealed. Sec. 20, Ch. 378, L. 1995.

Compiler's Comments

Histories of Repealed Sections:

50-4-301.	En. Sec. 5, Ch. 606, L. 1993.
50-4-302.	En. Sec. 6, Ch. 606, L. 1993.

50-4-303.	En. Sec. 7, Ch. 606, L. 1993.
50-4-304.	En. Sec. 8, Ch. 606, L. 1993.
50-4-305.	En. Sec. 9, Ch. 606, L. 1993.
50-4-306.	En. Sec. 11, Ch. 606, L. 1993.
50-4-307.	En. Sec. 12, Ch. 606, L. 1993.
50-4-308.	En. Sec. 13, Ch. 606, L. 1993.
50-4-309.	En. Sec. 14, Ch. 606, L. 1993.
50-4-310.	En. Sec. 15, Ch. 606, L. 1993.
50-4-311.	En. Sec. 16, Ch. 606, L. 1993.

50-4-312. Consumer report cards. (1) The Montana health care advisory council shall appoint a task force of consumers, employers, health insurers, hospitals, health care providers, and legislators to design a consumer report card that will enhance consumer responsibility in the use of health care services.

(2) The Montana health care advisory council shall, by October 1, 1996, submit the task force's proposal to the legislature containing the information needed to prepare the consumer report card. The information must include:

(a) uniform data, including charges, that will enable consumers to evaluate the cost of medical procedures;

(b) data about insurance plans, such as benefit and cost provisions;

(c) additional information that may assist consumers in making informed choices about their medical care; and

(d) any further applicable information generated as a result of efforts undertaken pursuant to 50-4-502.

(3) The Montana health care advisory council shall also develop standards for uniform data to be provided by health insurers, hospitals, and health care providers and shall take into account the feasibility and cost-effectiveness of the standards.

(4) To the extent possible, data collected for the consumer report card must be provided by data sources that currently exist.

History: En. Sec. 1, Ch. 349, L. 1995; amd. sec. 3, Ch. 349, L. 1995.

Part 4
Health Care Planning Regions

50-4-401. Repealed. Sec. 20, Ch. 378, L. 1995.
History: En. Sec. 17, Ch. 606, L. 1993.

50-4-402. Repealed. Sec. 20, Ch. 378, L. 1995.
History: En. Sec. 18, Ch. 606, L. 1993.

50-4-403. *(Temporary)* **Health care planning regions.** For the purpose of determining members of the health care advisory council, there are five health care planning regions that consist of the following counties:

(1) region I: Sheridan, Daniels, Valley, Roosevelt, Richland, McCone, Garfield, Dawson, Prairie, Wibaux, Fallon, Custer, Rosebud, Treasure, Powder River, and Carter;

(2) region II: Blaine, Hill, Liberty, Toole, Glacier, Phillips, Pondera, Teton, Chouteau, and Cascade;

(3) region III: Judith Basin, Fergus, Petroleum, Musselshell, Golden Valley, Wheatland, Sweet Grass, Stillwater, Yellowstone, Carbon, and Big Horn;

(4) region IV: Lewis and Clark, Powell, Granite, Deer Lodge, Silver Bow, Jefferson, Broadwater, Meagher, Park, Gallatin, Madison, and Beaverhead;

(5) region V: Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, and Ravalli. *(Terminates June 30, 2001—sec. 3, Ch. 517, L. 1997.)*

History: En. Sec. 7, Ch. 378, L. 1995.

Part 5

Health Care Billing, Data, and Cost Management Plans

50-4-501. Repealed. Sec. 20, Ch. 378, L. 1995.

History: En. Sec. 10, Ch. 606, L. 1993.

50-4-502. Health care database — information submitted. (1) The department, with advice from the health care advisory council, shall design and develop a health care database that includes data on health care resources and the cost and quality of health care services. The purpose of the database is to assist in developing and monitoring the progress of incremental health care reform measures that increase access to health care services, promote cost containment, and maintain quality of care.

(2) The department shall work in conjunction with health care providers, health insurers, health care facilities, private entities, and entities of state and local governments to determine the information necessary to fulfill the purposes of the database provided in subsection (1).

(3) The department shall adopt by rule a confidentiality code to ensure that information in the database is maintained and used according to state law governing confidential health care information.

(4) The department shall make recommendations to the legislature by October 1, 1996, on the actions needed to establish the database, including an estimate of the fiscal impact on state and local government, health care providers, health insurers, health care facilities, and private entities.

History: En. Sec. 19, Ch. 606, L. 1993; amd. Sec. 10, Ch. 378, L. 1995.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art II, sec. 10, Mont. Const.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Vital statistics, Title 50, ch. 15.

Health care information, Title 50, ch. 16.

Government health care information, Title 50, ch. 16, part 6.

50-4-503. Repealed. Sec. 20, Ch. 378, L. 1995.

History: En. Sec. 20, Ch. 606, L. 1993.

50-4-504. Definitions. As used in this part, the following definitions apply:

(1) "Database" means the health care database created pursuant to 50-4-502.

(2) "Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22.

(3) "Health care" includes both physical health care and mental health care.

(4) "Health care advisory council" means the council provided for in 50-4-103, 50-4-104, 50-4-203 through 50-4-206, and 50-4-403.

(5) "Health care facility" means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and

inpatient or ambulatory care to two or more unrelated persons. The term includes all facilities and institutions included in the definition of health care facility contained in 50-5-101. The term does not apply to a facility operated by religious groups relying solely on spiritual means, through prayer, for healing.

(6) "Health care provider" or "provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

(7) "Health insurer" means any health insurance company, health service corporation, health maintenance organization, insurer providing disability insurance as described in 33-1-207, and, to the extent permitted under federal law, any administrator of an insured, self-insured, or publicly funded health care benefit plan offered by public and private entities.

History: En. Sec. 11, Ch. 378, L. 1995; amd. Sec. 205, Ch. 42, L. 1997; amd. Sec. 1, Ch. 188, L. 1997.

50-4-505. Uniform claim forms and procedures. The commissioner of insurance, after consultation with the health care advisory council, may adopt by rule uniform health insurance claim forms and uniform standards and procedures for the use of the forms and processing of claims, including the submission of claims by means of an electronic claims processing system.

History: En. Sec. 42, Ch. 531, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

State Auditor as ex officio Commissioner of Insurance, 2-15-1903.

Part 6

Certificates of Public Advantage

Part Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

50-4-601. Finding and purpose. The legislature finds that the goals of controlling health care costs and improving the quality of and access to health care will be significantly enhanced in some cases by cooperative agreements and by mergers and consolidations among health care facilities and physicians licensed to practice medicine under Title 37, chapter 3. The purpose of this part is to provide the state, through the department, with direct supervision and control over the implementation of cooperative agreements, mergers, and consolidations among health care facilities and physicians licensed to practice medicine under Title 37, chapter 3, for which certificates of public advantage are granted. It is the intent of the legislature that supervision and control over the implementation of these agreements, mergers, and consolidations substitute state regulation of facilities and physicians licensed to practice medicine under Title 37, chapter 3, for competition between facilities and physicians licensed to practice medicine under Title 37, chapter 3, and that this regulation have the effect of granting the parties to the agreements, mergers, or consolidations state action immunity for actions that might otherwise be considered to be in violation of state or federal, or both, antitrust laws.

History: En. Sec. 37, Ch. 606, L. 1993; amd. Sec. 12, Ch. 378, L. 1995; amd. Secs. 1, 10, Ch. 526, L. 1995.

50-4-602. Cooperative agreements, mergers, and consolidations allowed. (1) A health care facility may enter into a cooperative agreement with one or more health care facilities. A health care facility may also merge or consolidate in whole or in part with one or more other health care facilities.

(2) A physician licensed to practice medicine under Title 37, chapter 3, may enter into a cooperative agreement with one or more physicians licensed to practice medicine under Title 37, chapter 3.

History: En. Sec. 38, Ch. 606, L. 1993; amd. Sec. 2, Ch. 526, L. 1995.

50-4-603. Certificate of public advantage — standards for certification — time for action by department. (1) Parties to a cooperative agreement, merger, or consolidation may apply to the department for a certificate of public advantage. The application for a certificate must include a copy of the proposed or executed cooperative, merger, or consolidation agreement, a description of the scope of the cooperation, merger, or consolidation contemplated by the agreement, and the amount, nature, source, and recipient of any consideration passing to any person under the terms of the agreement.

(2) The department shall hold a public hearing on the application for a certificate before acting upon the application. The department may not issue a certificate unless the department finds that the agreement is likely to result in lower health care costs or is likely to result in improved access to health care or higher quality health care without any undue increase in health care costs. If the department denies an application for a certificate for an executed agreement, the agreement is void upon the decision of the department not to issue the certificate. Parties to a void agreement may not implement or carry out the agreement. The parties to a void agreement may submit a new application for a certificate based upon a cooperative agreement, merger, or consolidation different from the original application.

(3) The department shall deny the application for a certificate or issue a certificate within 90 days of receipt of a completed application or within one 90-day extension, which may be granted by the department upon a showing of good cause by the applicants. If the department does not issue a certificate within that time, the application is considered to have been denied. A certificate may be issued subject to terms and conditions, as the department may determine are appropriate, in order to best achieve lower health care costs or greater access to or quality of health care.

(4) Any amendment to a cooperative, merger, or consolidation agreement and any material change in the operations or conduct of any party to a cooperative, merger, or consolidation agreement is considered to be a new agreement and may not take effect or occur until the department has issued a new certificate of public advantage approving the amendment or change.

History: En. Sec. 39, Ch. 606, L. 1993; amd. Sec. 13, Ch. 378, L. 1995; amd. Secs. 3, 10, Ch. 526, L. 1995.

50-4-604. Reconsideration by department. (1) If the department denies an application and refuses to issue a certificate, a party to the agreement may request that the department reconsider its decision. The department shall reconsider its decision if the party applying for reconsideration submits the request to the department in writing within 30 calendar days of the department's decision to deny the initial application.

(2) The department shall hold a public hearing on the application for reconsideration. The hearing must be held within 30 days of receipt of the request for reconsideration unless the party applying for reconsideration agrees to a hearing at a later time. The hearing must be held pursuant to 2-4-604.

(3) The department shall make a decision to deny the application or to issue the certificate within 30 days of the conclusion of the hearing required by subsection (2). The decision of the department must be part of written findings of fact and conclusions of law supporting the decision. The findings, conclusions, and decision must be served upon the applicant for reconsideration.

History: En. Sec. 40, Ch. 606, L. 1993; amd. Sec. 14, Ch. 378, L. 1995.

Cross-References

Public participation in governmental operations, Title 2, ch. 3.

50-4-605. Definitions. For the purposes of this part, the following definitions apply:

(1) "Certificate of public advantage" or "certificate" means a written certificate issued by the department as evidence of the department's intention that the implementation of a cooperative agreement, when actively supervised by the department, receive state action immunity from prosecution as a violation of state or federal antitrust laws.

(2) "Cooperative agreement" or "agreement" means a written agreement between two or more health care facilities for the sharing, allocation, or referral of patients; personnel; instructional programs; emergency medical services; support services and facilities; medical, diagnostic, or laboratory facilities or procedures; or other services customarily offered by health care facilities.

(3) "Department" means the department of justice provided for in Title 2, chapter 15, part 20.

(4) "Health care facility" means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory care to two or more unrelated persons. The term includes all facilities and institutions included in the definition of health care facility contained in 50-5-101. The term does not apply to a facility operated by religious groups relying solely on spiritual means, through prayer, for healing.

History: En. Sec. 19, Ch. 378, L. 1995; amd. Sec. 206, Ch. 42, L. 1997; amd. Sec. 2, Ch. 188, L. 1997.

50-4-606 through 50-4-608 reserved.

50-4-609. Revocation of certificate by department. (1) The department shall revoke a certificate previously granted by it if the department determines that the cooperative agreement is not resulting in lower health care costs or greater access to or quality of health care than would occur in absence of the agreement.

(2) A certificate may not be revoked by the department without giving notice and an opportunity for a hearing before the department as follows:

(a) Written notice of the proposed revocation must be given to the parties to the agreement for which the certificate was issued at least 120 days before the effective date of the proposed revocation.

(b) A hearing must be provided prior to revocation if a party to the agreement submits a written request for a hearing to the department within 30 calendar days after notice is mailed to the party under subsection (2)(a).

(c) Within 30 calendar days of receipt of the request for a hearing, the department shall hold a public hearing to determine whether or not to revoke the certificate. The hearing must be held in accordance with 2-4-604.

(3) The department shall make its final decision and serve the parties with written findings of fact and conclusions of law in support of its decision within 30 days after the conclusion of the hearing or, if no hearing is requested, within 30 days of the date of expiration of the time to request a hearing.

(4) If a certificate of public advantage is revoked by the department, the agreement for which the certificate was issued is terminated.

History: En. Sec. 41, Ch. 606, L. 1993; amd. Sec. 15, Ch. 378, L. 1995.

50-4-610. Appeal. A party to a cooperative agreement may appeal, in the manner provided in Title 2, chapter 4, part 7, a final decision by the department to deny an application for a certificate or a decision by the department to revoke a certificate. A revocation of a certificate pursuant to 50-4-609 does not become final until the time for appeal has expired. If a decision to revoke a certificate is appealed, the decision is stayed pending resolution of the appeal by the courts.

History: En. Sec. 42, Ch. 606, L. 1993; amd. Sec. 16, Ch. 378, L. 1995.

50-4-611. Record of agreements to be kept. The department shall keep a copy of agreements for which a certificate is in effect pursuant to this part. A party to an agreement who terminates the agreement shall notify the department in writing of the termination within 30 days after the termination.

History: En. Sec. 43, Ch. 606, L. 1993; amd. Sec. 17, Ch. 378, L. 1995; amd. Secs. 4, 10, Ch. 526, L. 1995.

Cross-References

Public records generally, Title 2, ch. 6, part 1.

50-4-612. Rulemaking. The department shall adopt rules to implement this part. The rules shall include rules:

(1) specifying the form and content of applications for a certificate;

(2) specifying necessary details for reconsideration of denial of certificates, revocations of certificates, hearings required or authorized by this part, and appeals; and

(3) to effect the active supervision by the department of agreements between health care facilities. These rules may include reporting requirements for parties to an agreement for which a certificate is in effect.

History: En. Sec. 44, Ch. 606, L. 1993; amd. Sec. 18, Ch. 378, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-4-613 through 50-4-620 reserved.

50-4-621. Enforcement by attorney general. The attorney general may bring an action in the name of the state against a person or persons to whom a certificate has been issued in order to enforce any terms or conditions imposed by the department upon the issuance of the certificate, to enjoin the violation of the terms or conditions, or to enjoin any material violation of or deviation from the terms of the cooperative, merger, or consolidation agreement submitted to and approved by the department. The action may be brought in the district court of any judicial district in which a person or persons to whom a certificate has been issued reside or maintain a principal place of business or, with the consent of the parties, in the district court of the first judicial district, Lewis and Clark County.

History: En. Sec. 5, Ch. 526, L. 1995; amd. Sec. 10, Ch. 526, L. 1995.

Cross-References

Attorney General — general duties, 2-15-501.

50-4-622. Reports. If the department issues a certificate of public advantage, the facilities or physicians to whom the certificate has been issued shall submit a report to the department evaluating whether the cooperative, merger, or consolidation agreement submitted to and approved by the department has been complied with during the preceding year and, if applicable, evaluating whether any terms and conditions imposed by the department when it issued the certificate have been met or otherwise satisfied during the preceding year. The report must be submitted annually or more frequently if required by the department. The department shall in turn issue findings as to whether the terms and conditions are being met or otherwise satisfied. The department shall keep copies of all reports and findings based on the reports.

History: En. Sec. 6, Ch. 526, L. 1995; amd. Sec. 10, Ch. 526, L. 1995.

50-4-623. Fees — statutory appropriation. (1) The department shall establish by rule fees to accompany the filing of an application for a certificate of public advantage and for a report required by 50-4-622. The fees must be reasonably related to the costs of the department in considering applications, evaluating reports, and performing other duties necessary to administer this part. The costs may include the retention of accounting, technical, and legal assistance that the department considers necessary to process applications and reports. The department shall maintain records sufficient to support the fees charged under this section.

(2) The fees must be deposited in an account in the special revenue fund. The account is statutorily appropriated, as provided in 17-7-502, to the department.

History: En. Sec. 7, Ch. 526, L. 1995; amd. Sec. 10, Ch. 526, L. 1995.

CHAPTER 5

HOSPITALS AND RELATED FACILITIES

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50-5-229. Repealed.
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Chapter Cross-References

Limits on liability of health care provider in emergency situations, 27-1-734.

Part 1
General Provisions

Part Cross-References

Medical services and boarding homes for the aged, Title 7, ch. 34.

Assignment of right to periodic installments for certain future damages, 25-9-405.

Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, Title 52, ch. 3, part 8.

Health care services, Title 53, ch. 6.

Community mental health centers, Title 53, ch. 21, part 2.

Community-based nursing homes — Montana Mental Health Nursing Care Center, Title 53, ch. 21, part 4.

Health facility development, Title 90, ch. 7.

50-5-101. Definitions. As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled

basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(3) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection (3), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration. The term does not include the administration of prescriptive medications.

(4) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

(5) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(6) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(7) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(8) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(9) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(10) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation

facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(11) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(12) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(13) "Department" means the department of public health and human services provided for in 2-15-2201.

(14) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(15) "Federal acts" means federal statutes for the construction of health care facilities.

(16) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(17) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including chemical dependency counselors. The term includes chemical dependency facilities, end-stage renal dialysis facilities, health maintenance organizations, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(18) "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

(19) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(20) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(21) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

(22) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(23) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(24) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(25) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for persons with developmental disabilities, as defined in 53-20-102, or for individuals with related problems.

(26) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(27) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(28) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(29) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant-certified, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

(30) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(31) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(32) "Observation bed" means a bed occupied by a patient recovering from surgery or other treatment.

(33) "Offer" means the representation by a health care facility that it can provide specific health services.

(34) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

(35) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include observation beds.

(36) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(37) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(38) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

(39) "Personal-care facility" means a facility in which personal care is provided for residents in either a category A facility or a category B facility as provided in 50-5-227.

(40) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(41) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

(42) "Residential care facility" means an adult day-care center, an adult foster care home, a personal-care facility, or a retirement home.

(43) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(44) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(45) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

(46) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(47) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.

History: Ap. p. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; Ap. p. Sec. 159, Ch. 197, L. 1967; amd. Sec. 1, Ch. 290, L. 1969; amd. Sec. 1, Ch. 197, L. 1971; amd. Sec. 1, Ch. 448, L. 1973; amd. Sec. 1, Ch. 150, L. 1974; amd. Sec. 1, Ch. 447, L. 1975; amd. Sec. 22, Ch. 187, L. 1977; R.C.M. 1947, 69-4102(1), 69-5201; amd. Sec. 1, Ch. 347, L. 1979; amd. Sec. 1, Ch. 432, L. 1981; amd. Sec. 1, Ch. 433, L. 1981; amd. Sec. 1, Ch. 324, L. 1983; amd. Secs. 1, 13, Ch. 329, L. 1983; amd. Sec. 7, Ch. 597, L. 1983; amd. Sec. 1, Ch. 641, L. 1983; amd. Sec. 9, Ch. 713, L. 1985; amd. Sec. 108, Ch. 370, L. 1987; amd. Sec. 1, Ch. 450, L. 1987; amd. Sec. 1, Ch. 477, L. 1987; amd. Sec. 13, Ch. 330, L. 1989; amd. Sec. 1, Ch. 616, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 764, L. 1991; amd. Sec. 1, Ch. 151, L. 1993; amd. Sec. 1, Ch. 590, L. 1993; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 1, Ch. 366, L. 1995; amd. Sec. 2, Ch. 398, L. 1995; amd. Sec. 92, Ch. 418, L. 1995; amd. Sec. 250, Ch. 546, L. 1995; amd. Sec. 207, Ch. 42, L. 1997; amd. Sec. 3, Ch. 93, L. 1997; amd. Sec. 1, Ch. 99, L. 1997; amd. Sec. 2, Ch. 171, L. 1997; amd. Sec. 3, Ch. 188, L. 1997; amd. Sec. 4, Ch. 98, L. 1999; amd. Sec. 1, Ch. 133, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 98 deleted definition of ambulatory surgical facility that read: ""Ambulatory surgical facility" means a facility that provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment"; in definition of health care facility in second sentence inserted "other physical or mental health care workers regulated under Title 37, including chemical dependency counselors" and in third sentence after "The term includes" deleted "ambulatory surgical facilities" and near end substituted "outpatient centers for primary care" and "outpatient centers for surgical services" for "outpatient facilities"; in definition of medical assistance facility in last sentence of (a) inserted "retroactively and" and at end inserted "if the individual's attending physician, physician assistant-certified, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual"; substituted definition of outpatient center for primary care for definition of outpatient facility that read: ""Outpatient facility" means a facility, located in or apart from a hospital, that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds. An ambulatory surgical facility is also an outpatient facility"; inserted definition of outpatient center for surgical services; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 133 in definition of adult foster care home after "private home" inserted "or other facility", after "offers" inserted exception clause, and at end substituted "related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager" for "related by blood or marriage to the owner of the home". Amendment effective July 1, 1999.

Applicability: Section 7, Ch. 98, L. 1999, provided: "[This act] applies to health care facility licenses or certificates of need issued pursuant to Title 50, chapter 5, after October 1, 1999."

50-5-102. Repealed. Sec. 27, Ch. 347, L. 1979.

History: En. Sec. 160, Ch. 197, L. 1967; R.C.M. 1947, 69-5202.

50-5-103. Rules and standards — accreditation by joint commission. (1) The department shall adopt rules and minimum standards for implementation of parts 1 and 2.

(2) Any facility covered by this chapter must comply with the state and federal requirements relating to construction, equipment, and fire and life safety.

(3) The department shall extend a reasonable time for compliance with rules for parts 1 and 2 upon adoption.

(4) Any hospital located in this state that furnishes written evidence required by the department, including the recommendation for future compliance statements to the department of its accreditation granted by the joint commission on accreditation of health care organizations, is eligible for licensure in the state for the accreditation period and may not be subjected to an inspection by the department for purposes of the licensing process. The department may, in addition to its inspection authority in 50-5-116, inspect any licensed health care facility to answer specific complaints made in writing by any person against the facility when the complaints pertain to licensing requirements. Inspection by the department upon a specific complaint made in writing pertaining to licensing requirements is limited to the specific area or condition of the health care facility to which the complaint pertains.

(5) The department may consider as eligible for licensure during the accreditation period any health care facility located in this state, other than a hospital, that furnishes written evidence, including the recommendation for future compliance statements, of its accreditation by the joint commission on accreditation of healthcare organizations. The department may inspect a health care facility considered eligible for licensure under this section to ensure compliance with state licensure standards.

(6) The department may consider as eligible for licensure during the accreditation period any rehabilitation facility that furnishes written evidence, including the recommendation for future compliance statements, of accreditation of its programs by the commission on accreditation of rehabilitation facilities. The department may inspect a rehabilitation facility considered eligible for licensure under this section to ensure compliance with state licensure standards.

History: En. Sec. 171, Ch. 197, L. 1967; amd. Sec. 22, Ch. 366, L. 1969; amd. Sec. 3, Ch. 448, L. 1973; amd. Sec. 74, Ch. 349, L. 1974; R.C.M. 1947, 69-5213; amd. Sec. 2, Ch. 347, L. 1979; amd. Sec. 2, Ch. 432, L. 1981; amd. Sec. 1, Ch. 279, L. 1991; amd. Sec. 9, Ch. 415, L. 1993; amd. Sec. 3, Ch. 366, L. 1995; amd. Sec. 2, Ch. 99, L. 1997; amd. Sec. 4, Ch. 188, L. 1997.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

State fire prevention and investigation program, Title 50, ch. 3.

Fire protection equipment, Title 50, ch. 39.

Building construction standards, Title 50, ch. 60.

50-5-104. Certain exemptions for spiritual healing institution. Parts 1 through 3 and rules and standards adopted by the department may not authorize the supervision, regulation, or control of care or treatment of persons in any home or institution conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination. However, a license is required and the minimum standards referred to in 50-5-103(2) apply.

History: En. Sec. 175, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5217(2); amd. Sec. 3, Ch. 347, L. 1979.

Cross-References

Freedom of religion, Art. II, sec. 5, Mont. Const.

50-5-105. Discrimination prohibited. (1) All phases of the operation of a health care facility must be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental disability, or political ideas.

(2) (a) A health care facility may not refuse to admit a person to the facility solely because the person has an HIV-related condition.

(b) For the purposes of this subsection (2), the following definitions apply:

(i) "HIV" means the human immunodeficiency virus identified as the causative agent of acquired immunodeficiency syndrome (AIDS) and includes all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological system and leave the infected person immunodeficient or neurologically impaired.

(ii) "HIV-related condition" means any medical condition resulting from an HIV infection, including but not limited to seropositivity for HIV.

(3) A person who operates a facility may not discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient must continue and remain unaffected.

(4) Except for a hospital that employs its medical staff, a hospital considering an application for staff membership or granting privileges within the scope of the applicant's license may not deny the application or privileges because the applicant is licensed under Title 37, chapter 5 or 6.

(5) This section does not preclude a hospital from limiting membership or privileges based on education, training, or other relevant criteria.

History: En. Sec. 175, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5217(1); amd. Sec. 4, Ch. 347, L. 1979; amd. Sec. 1, Ch. 152, L. 1989; amd. Sec. 1, Ch. 309, L. 1989; amd. Sec. 47, Ch. 472, L. 1997.

Cross-References

Individual dignity, Art. II, sec. 4, Mont. Const.

Doctor-patient privilege, 26-1-805.

Privileges, Rules 501 through 505, M.R.Ev. (see Title 26, ch. 10).

Freedom from discrimination provided, 49-1-102.

Discrimination in public accommodations prohibited, 49-2-304.

Confidentiality of health care information, Title 50, ch. 16, part 5.

50-5-106. Records and reports required of health care facilities — confidentiality. Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care facility shall submit an annual report for the preceding calendar year to the department. The report must be on forms and contain information specified by the department. Information received by the department through reports, inspections, or provisions of parts 1 and 2 may not be disclosed in a way which would identify patients. A department employee who discloses information that would identify a patient must be dismissed from employment and subject to the provisions of 45-7-401 and 50-16-551, unless the disclosure was authorized in writing by the patient, the patient's guardian, or the patient's agent in accordance with Title 50, chapter 16, part 5. Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities must be made available to the public and the health planning agencies within the state. Applications by health care facilities for certificates of need and any information relevant to review of these applications, pursuant to part 3, must be accessible to the public.

History: En. Sec. 176, Ch. 197, L. 1967; R.C.M. 1947, 69-5218; amd. Sec. 5, Ch. 347, L. 1979; amd. Sec. 13, Ch. 329, L. 1983; amd. Sec. 26, Ch. 632, L. 1987; amd. Sec. 251, Ch. 546, L. 1995.

Cross-References

Confidentiality of health care information, Title 50, ch. 16, part 5.

50-5-107. Unlawful use of word nursing. It is unlawful for any facility operating in this state to use the word "nursing" in its name, signs, advertising, etc., unless that facility does in fact provide 24-hour nursing care by licensed nurses.

History: En. 69-5203.1 by Sec. 2, Ch. 448, L. 1973; R.C.M. 1947, 69-5203.1.

Cross-References

Unfair trade practices, Title 30, ch. 14, part 2.

Nursing, Title 37, ch. 8.

50-5-108. Injunction. The department may bring an action for injunction or other process against any person to:

(1) restrain a facility from engaging in a prohibited activity that is endangering the health, safety, or welfare of any individual under the care of the facility;

(2) enjoin a violation of part 1 or 2 of this chapter, or a violation of a rule, license provision, or order adopted or issued pursuant to part 1 or 2; or

(3) require compliance with part 1 or 2 of this chapter or compliance with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

History: En. Sec. 178, Ch. 197, L. 1967; amd. Sec. 75, Ch. 349, L. 1974; R.C.M. 1947, 69-5220; amd. Sec. 6, Ch. 347, L. 1979; amd. Sec. 10, Ch. 415, L. 1993.

Cross-References

Duties of Attorney General, 2-15-501.

Injunctive relief procedures, Title 27, ch. 19.

50-5-109. Repealed. Sec. 13, Ch. 415, L. 1993.

History: En. Sec. 179, Ch. 197, L. 1967; R.C.M. 1947, 69-5221; amd. Sec. 7, Ch. 347, L. 1979.

50-5-110 reserved.

50-5-111. Prohibited activities. It is unlawful to:

(1) operate a facility without a license;

(2) prevent, interfere with, or impede department investigation, department enforcement, department examination of relevant books and records, or activities of the department concerning the preservation of evidence; or

(3) violate any provision of part 1 or 2 of this chapter or violate a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

History: En. Sec. 1, Ch. 415, L. 1993.

50-5-112. Civil penalties. (1) A person who commits an act prohibited by 50-5-111 is subject to a civil penalty not to exceed $1,000 for each day that a facility is in violation of a provision of part 1 or 2 of this chapter or of a rule, license provision, or order adopted or issued pursuant to part 1 or 2. The department or, upon request of the department, the county attorney of the county in which the health care facility in question is located may petition the court to impose the civil penalty. Venue for an action to collect a civil penalty pursuant to this section is in the county in which the facility is located or in the first judicial district.

(2) In determining the amount of penalty to be assessed for an alleged violation under this section, the court shall consider:

(a) the gravity of the violation in terms of the degree of physical or mental harm to a resident or patient;

(b) the degree of harm to the health, safety, rights, security, or welfare of a resident or patient;

(c) the degree of deviation committed by the facility from a requirement imposed by part 1 or 2 of this chapter or by a rule, license provision, or order adopted or issued pursuant to part 1 or 2; and

(d) other matters as justice may require.

(3) A penalty collected under this section must be deposited in the state general fund.

(4) In addition to or exclusive of the remedy provided in subsection (1), the department may pursue remedies available for a violation, as provided for in 50-5-108, or any other remedies available to it.

History: En. Sec. 2, Ch. 415, L. 1993; amd. Sec. 42, Ch. 422, L. 1997.

Cross-References

Duties of County Attorney related to state matters, 7-4-2716.

50-5-113. Criminal penalties. (1) A person is guilty of a criminal offense under this section if the person knowingly conceals material information about the operation of the facility or does any of the following and by doing so threatens the health or safety of one or more individuals entrusted to the care of the person:

(a) commits an act prohibited by 50-5-111;

(b) omits material information or makes a false statement or representation in an application, record, report, or other document filed, maintained, or used for compliance with the provisions of part 1 or 2 of this chapter or with rules, license provisions, or orders adopted or issued pursuant to part 1 or 2; or

(c) destroys, alters, conceals, or fails to file or maintain any record, information, or application required to be maintained or filed in compliance with a provision of part 1 or 2 of this chapter or in compliance with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(2) A person convicted under subsection (1) is subject to a fine of not more than $1,000 for the first offense and not more than $2,000 for each subsequent offense for each day that a facility is in violation of a provision of part 1 or 2 of this chapter or of a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(3) In determining the amount of penalty to be assessed for an alleged violation under this section, the court shall consider:

(a) the gravity of the violation in terms of the degree of physical or mental harm to a resident or patient;

(b) the degree of harm to the health, safety, rights, security, or welfare of a resident or patient;

(c) the degree of deviation committed by the facility from a requirement imposed by part 1 or 2 of this chapter or by a rule, license provision, or order adopted or issued pursuant to part 1 or 2; and

(d) other matters as justice may require.

(4) Prosecution under this section does not bar enforcement under any other section of this chapter or pursuit of any other appropriate remedy by the department.

(5) Venue for prosecution pursuant to this section is in the county in which the facility is located or in the first judicial district.

(6) A penalty collected under this section must be deposited in the state general fund.

History: En. Sec. 3, Ch. 415, L. 1993; amd. Sec. 43, Ch. 422, L. 1997.

Cross-References

Duties of County Attorney relating to state matters, 7-4-2716.

50-5-114. Administrative enforcement — notice — order for corrective action. (1) If the department believes that a violation of a provision of part 1 or 2 of this chapter or of a rule adopted or a condition or limitation imposed by a license issued pursuant to part 1 or 2 has occurred, it may serve written notice on the alleged violator or the violator's agent personally or by certified mail. The notice must specify the provision of part 1 or 2 of this chapter or the rule or license condition or limitation alleged to have been violated and the facts alleged to constitute the violation. The notice must inform the alleged violator of the right to a hearing and that the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to the hearing. The notice may include an order to take necessary corrective action, including ceasing new admissions, relocating residents, or ceasing the violation within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the department. On receipt of the request, the department shall schedule a hearing. Until issuance of a contrary decision by the department, a department order concerning corrective action remains effective and enforceable.

(2) If, after a hearing held under subsection (1), the department finds that a violation has occurred, it shall issue an appropriate order for the prevention, abatement, or control of the violation involved or the taking of other corrective action. As appropriate, an order issued as part of a notice or after a hearing may prescribe the date by which the violation must cease and the time limits for particular action in preventing, abating, or controlling the violation. If, after a hearing on an order contained in a notice, the department finds that a violation has not occurred or is not occurring, it shall declare the order void.

(3) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing conducted pursuant to this section.

(4) Instead of or in addition to issuing the order provided for in subsection (1), the department may:

(a) require that the alleged violators appear before the department for a hearing at a time and place specified in the notice and answer the charges; or

(b) initiate action under any other applicable provisions of part 1 or 2 of this chapter.

(5) Before acting under this section, the department shall attempt to obtain voluntary compliance through a warning, conference, or any other appropriate means.

(6) In connection with a hearing held pursuant to this section, the department may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of any party.

History: En. Sec. 4, Ch. 415, L. 1993; amd. Sec. 252, Ch. 546, L. 1995.

Cross-References

Subpoenas and enforcement — compelling testimony, 2-4-104.

50-5-115. Receiverships. (1) If receivership has not already been instituted under medicaid or medicare, upon notice to the facility, the department may file a complaint in district court for receivership under any of the following conditions in addition to applicable conditions listed in 27-20-102:

(a) a facility is operating without a license and residents are in danger of serious physical or mental harm;

(b) a facility intending to close has not made arrangements within 30 days before closure for the orderly transfer of residents;

(c) a facility is abandoned by an owner; or

(d) a life threatening situation exists for the residents of the facility.

(2) If the department believes or has received notice from the department of justice that there is an emergency that presents or might present an immediate and serious threat to the health or safety of patients or residents of a facility, a receiver may be appointed by the court upon an ex parte application by the department. If a receiver is appointed upon an ex parte application, notice must be given by the department to the facility within 24 hours of issuance of the receivership order and a hearing must be offered the facility by the court within 10 days of issuance of the order to determine whether the order will be continued.

(3) The department shall maintain a list of persons qualified to act as receivers.

(4) The selection, appointment, and removal of receivers must be consistent with Title 27, chapter 20, parts 2 and 3.

(5) Whenever possible, receivers must be paid from the income of the facility. However, receivers may be paid from the patient protection account provided for in 50-5-232. The court shall direct the amount of payments to be made to the receiver, the payments to be made by the receiver, and the order of payments made to the receiver or to other entities. Payments owed to a facility that are made to the receiver must be used to discharge any obligation of the entity making the payments owed to the facility.

(6) The powers and duties of the receiver include:

(a) the duty to protect the health, welfare, and safety of the residents;

(b) the power to hire, discipline, and fire staff;

(c) the power to collect debts due to the facility;

(d) the power to settle labor disputes;

(e) the power to petition the court to set aside unreasonable contracts or leases entered into by the facility management;

(f) the power to make capital investments in the facility with court approval; and

(g) all other powers granted receivers by 27-20-302.

History: En. Sec. 5, Ch. 415, L. 1993; amd. Sec. 3, Ch. 514, L. 1995.

50-5-116. Facility inspections. (1) In addition to its annual licensure inspections, as provided by 50-5-204, the department may inspect any facility for compliance with part 1 or 2 of this chapter or for compliance with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(2) An authorized representative of the department may inspect a facility and associated property without prior notice to the owner or staff of the facility whenever the department considers it necessary. The authorized representative must be given access to all records and an opportunity to copy the records.

History: En. Sec. 6, Ch. 415, L. 1993.

Part 2
Licensing

Part Cross-References

One-step licensing — inspection by other Department, Title 50, ch. 8.

50-5-201. License requirements. (1) A facility or licensee considering construction of or alteration or addition to a health care facility shall submit plans and specifications to the department for preliminary inspection and approval prior to commencing construction.

(2) A person may not operate a health care facility unless the facility is licensed by the department. Licenses may be issued for a period of 1 to 3 years in duration. A license is valid only for the person and premises for which it was issued. A license may not be sold, assigned, or transferred.

(3) Upon discontinuance of the operation or upon transfer of ownership of a facility, the license must be returned to the department.

(4) Licenses must be displayed in a conspicuous place near the admitting office of the facility.

History: En. Sec. 161, Ch. 197, L. 1967; amd. Sec. 105, Ch. 349, L. 1974; R.C.M. 1947, 69-5203; amd. Sec. 2, Ch. 37, L. 1979; amd. Sec. 8, Ch. 347, L. 1979; amd. Sec. 1, Ch. 405, L. 1991; amd. Sec. 11, Ch. 415, L. 1993.

50-5-202. License fees. The department shall collect fees for each license issued for deposit in the state general fund as follows:

(1) facilities with 20 beds or less—$20;

(2) facilities with 21 beds or more—$1 per bed.

History: En. Sec. 162, Ch. 197, L. 1967; amd. Sec. 1, Ch. 282, L. 1975; R.C.M. 1947, 69-5204.

50-5-203. Application for license. The procedure to apply for a license is as follows:

(1) At least 30 days prior to the opening of a facility and after that no later than the expiration date of the license, application is made to the department accompanied by the license fee.

(2) The application shall contain:

(a) the name and address of the applicant if an individual, the name and address of each member if a firm, partnership, or association, or the name and address of each officer if a corporation;

(b) the location of the facility;

(c) the name of the person or persons who will manage or supervise the facility;

(d) the number and type of patients or residents for which care is provided;

(e) any information which the department may require pertaining to the number, experience, and training of employees;

(f) information on ownership, contract, or lease agreement if operated by a person other than the owner.

History: En. Sec. 163, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 2, Ch. 282, L. 1975; R.C.M. 1947, 69-5205; amd. Sec. 2, Ch. 405, L. 1991.

50-5-204. Issuance and renewal of licenses — inspections. (1) After receipt of a new application and notice that the facility is ready to be inspected, the department or its authorized agent shall conduct an initial inspection of the facility within 45 days.

(2) After receipt of an application for renewal of a license, the department or its authorized agent shall inspect the facility without prior notice to the operator or staff.

(3) If the department determines that the facility meets minimum standards and the proposed or existing staff is qualified, the department shall issue a license for a period of 1 to 3 years in duration.

(4) If minimum standards are not met, the department may issue a provisional license for less than 1 year if operation will not result in undue hazard to patients or residents or if the demand for accommodations offered is not met in the community.

(5) The minimum standards that home health agencies must meet in order to be licensed must be as outlined in 42 U.S.C. 1395x(o), as amended, and in rules implementing it that add minimum standards.

(6) The department may inspect a licensed health care facility whenever it considers it necessary. The entire premises of a licensed facility must be open to inspection, and access to all records must be granted at all reasonable times.

History: En. Sec. 164, Ch. 197, L. 1967; R.C.M. 1947, 69-5206; amd. Sec. 9, Ch. 347, L. 1979; amd. Sec. 1, Ch. 5, Sp. L. 1981; amd. Sec. 1, Ch. 443, L. 1985; amd. Sec. 1, Ch. 143, L. 1987; amd. Sec. 3, Ch. 405, L. 1991; amd. Sec. 4, Ch. 366, L. 1995.

Cross-References

Confidentiality of health care information, Title 50, ch. 16, part 5.

Investigation of complaint under Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, 52-3-811.

50-5-205. Repealed. Sec. 27, Ch. 347, L. 1979.

History: En. Sec. 165, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 23, Ch. 187, L. 1977; R.C.M. 1947, 69-5207.

50-5-206. Repealed. Sec. 27, Ch. 347, L. 1979.

History: En. Sec. 166, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5208.

50-5-207. Denial, suspension, or revocation of health care facility license — provisional license. (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:

(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.

(b) The staff is insufficient in number or unqualified by lack of training or experience.

(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.

(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.

(e) There is cruelty or indifference affecting the welfare of the patients or residents.

(f) There is misappropriation of the property or funds of a patient or resident.

(g) There is conversion of the property of a patient or resident without the patient's or resident's consent.

(h) Any provision of parts 1 through 3 is violated.

(2) The department may reduce a license to provisional status if as a result of an inspection it is determined that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.

(4) The department may provide in its revocation order that the revocation is in effect for up to 2 years. If this provision is appealed, it must be affirmed or reversed by the court.

History: En. Sec. 167, Ch. 197, L. 1967; R.C.M. 1947, 69-5209; amd. Sec. 10, Ch. 347, L. 1979; amd. Sec. 12, Ch. 415, L. 1993; amd. Sec. 253, Ch. 546, L. 1995.

Cross-References

Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, Title 52, ch. 3, part 8.

50-5-208. Hearing required. (1) A license may not be denied, suspended, or revoked without notice and an opportunity for a hearing before the department.

(2) Notice must be given the applicant or licensee of a date, not less than 15 days after mailing or service, for a hearing before the department.

(3) The decision of the department is final 30 days after it is mailed or served unless the applicant or licensee commences an action in the district court to appeal the decision. An appeal must be in the district court where the facility is located or will be located.

History: En. Sec. 168, Ch. 197, L. 1967; amd. Sec. 73, Ch. 349, L. 1974; R.C.M. 1947, 69-5210; amd. Sec. 254, Ch. 546, L. 1995.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

50-5-209. Repealed. Sec. 27, Ch. 347, L. 1979.

History: En. Sec. 177, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5219.

50-5-210. Department to make rules — standards for hospices. (1) The department shall by rule establish standards for the licensure of a hospice. These standards must consider the terminally ill patient and the patient's family as a unit and require service delivery through a medically directed interdisciplinary team of professionals and volunteers acting under a defined hospice administration.

(2) A hospice must meet the standards of care defined by law for any skilled care it provides that normally would be provided by a licensed facility such as a hospital, skilled nursing facility, or home health agency.

(3) The department shall by rule establish standards for the licensure of a residential hospice facility.

(4) The department shall by rule establish standards for the licensure of a freestanding inpatient hospice facility in accordance with medicare certification regulations contained in 42 CFR, part 418, subparts C through E, as adopted by the department. To be licensed by the department, the facility must be managed directly by a medicare-certified hospice.

History: En. Sec. 2, Ch. 324, L. 1983; amd. Sec. 2, Ch. 151, L. 1993.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

50-5-211. Hospital hospice programs — exemptions from separate licensure. A hospice program provided by a hospital need not be separately licensed if the department finds that such program meets the standards of 50-5-210.

History: En. Sec. 3, Ch. 324, L. 1983.

50-5-212. Organ procurement program required. The administrator of a hospital licensed under this chapter shall as a condition of licensure under 50-5-201:

(1) establish a written protocol for the identification of potential organ donors that:

(a) assures that families of potential organ donors are made aware of the option of organ or tissue donation and their option to decline;

(b) encourages discretion and sensitivity with respect to the circumstances, views, and beliefs of families of potential organ donors; and

(c) requires that a qualified organ procurement agency be notified of potential organ donors;

(2) designate and train a person or persons to represent him for purposes of requesting an anatomical gift as provided in 72-17-213; and

(3) make known to the public that the hospital has an organ procurement program as described in subsection (1).

History: En. Sec. 3, Ch. 219, L. 1987; amd. Sec. 1, Ch. 540, L. 1989.

Cross-References

HIV testing required, 50-16-1008.

Uniform Anatomical Gift Act, Title 72, ch. 17.

50-5-213. Requirements for home infusion therapy services. An agency providing home infusion therapy services shall directly provide either the home infusion therapy services or skilled nursing services and may either directly provide or may arrange for the provision of the other services.

History: En. Sec. 10, Ch. 366, L. 1995.

50-5-214. Requirements for retirement homes. A retirement home shall offer meals or central kitchens but may not offer nursing or personal care services to the residents, other than by a contract with a third party.

History: En. Sec. 11, Ch. 366, L. 1995.

50-5-215. Standards for adult foster care homes. The department may adopt rules establishing standards for the licensing of adult foster care homes. The standards must provide for the safety and comfort of the residents and may be adopted by the department only after receiving the advice and recommendations of the state fire prevention and investigation program of the department of justice in relation to fire and safety requirements for adult foster care homes.

History: En. Sec. 12, Ch. 366, L. 1995.

50-5-216. Limitation on care provided in adult foster care home. (1) Except as provided in this section, the types of care offered by adult foster care homes are limited to light personal care or custodial care and may not include skilled nursing care.

(2) An adult foster care home may be licensed to provide care for an adult receiving state-funded services through the developmental disabilities program of the department or for an adult who resided in the home before reaching 18 years of age, even though the adult is:

(a) in need of skilled nursing care;

(b) in need of medical, physical, or chemical restraint;

(c) nonambulatory or bedridden;

(d) incontinent to the extent that bowel or bladder control is absent; or

(e) unable to self-administer medications.

(3) An adult foster care home that applies for a license under subsection (2) shall provide the department with a copy of the statement required in subsection (4).

(4) A resident of an adult foster care home licensed under subsection (2) must have a certification in the form of a signed statement, renewed on an annual basis, from a physician, a physician assistant-certified, a nurse practitioner, or a registered nurse, whose work is unrelated to the operation of the home and who has actually visited the home within the year covered by the statement and certifies that:

(a) the services available to the resident in the home or in the community, or services that may be brought into the home from the community, including nursing services or therapies, are appropriate for meeting the health care or other needs of the resident; and

(b) the health care status of the resident does not necessitate placing the resident in a more intensive residential service setting.

(5) As used in this section, "skilled nursing care" means 24-hour care supervised by a registered nurse or a licensed practical nurse under the orders of an attending physician.

History: En. Sec. 13, Ch. 366, L. 1995; amd. Sec. 2, Ch. 133, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 133 in (2) inserted reference to adult receiving state-funded services through department and after "an adult who resided in the home" deleted "for at least 1 year"; at end of (3) substituted "shall provide the department with a copy of the statement required in subsection (4)" for "must have a signed statement from a physician agreeing that the care needed by the adult may be provided in the home"; in (4) after "must have a" inserted "certification in the form of a" and at end of introductory phrase inserted "and certifies that"; deleted former (4)(b) that read: "(b) has certified that the particular needs of the resident can be adequately met in the home"; inserted (4)(a) relating to appropriateness of available services; deleted former (4)(c) that read: "(c) has certified that there has been no significant change in health care status that would require another level of care"; inserted (4)(b) relating to no need for more intensive residential service setting; and made minor changes in style. Amendment effective July 1, 1999.

50-5-217 through 50-5-220 reserved.

50-5-221. Repealed. Sec. 13, Ch. 415, L. 1993.

History: En. Sec. 11, Ch. 347, L. 1979.

50-5-222 through 50-5-224 reserved.

50-5-225. Personal-care facilities — services to residents. A personal-care facility must provide the following services to facility residents:

(1) residential services, such as laundry, housekeeping, food service, and either providing or making available provision for local transportation;

(2) personal assistance services, such as assistance by staff as required by residents in eating, walking, dressing, grooming, and similar routine living tasks;

(3) recreational activities; and

(4) supervision of self-medication.

History: En. Sec. 1, Ch. 597, L. 1983.

50-5-226. Placement in personal-care facilities. (1) A personal-care facility may provide personal-care services to a resident who is 18 years of age or older and in need of the personal care for which the facility is licensed under 50-5-227.

(2) A resident of a personal-care facility licensed as a category A facility under 50-5-227 may obtain third-party provider services for skilled nursing care for no more than 20 consecutive days at a time.

(3) A resident of a personal-care facility licensed as a category B facility under 50-5-227 must have a signed statement from a physician agreeing to the resident's admission to the facility if the resident is:

(a) in need of skilled nursing care;

(b) in need of medical, physical, or chemical restraint;

(c) nonambulatory or bedridden;

(d) incontinent to the extent that bowel or bladder control is absent; or

(e) unable to self-administer medications.

(4) A resident of a category B personal-care facility who needs skilled nursing care must have a signed statement, renewed on a quarterly basis by a physician, a physician assistant-certified, a nurse practitioner, or a registered nurse, whose work is unrelated to the operation of the facility and who:

(a) actually visited the facility within the calendar quarter covered by the statement;

(b) has certified that the particular needs of the resident can be adequately met in the facility; and

(c) has certified that there has been no significant change in health care status that would require another level of care.

(5) The department shall provide by rule:

(a) an application or placement procedure informing a prospective resident and, if applicable, the resident's physician of:

(i) physical and mental standards for residents of personal-care facilities;

(ii) requirements for placement in a facility with a higher standard of care if a resident's condition deteriorates; and

(iii) the services offered by the facility and services that a resident may receive from third-party providers while resident in the facility;

(b) standards to be used by a facility and, if appropriate, by a screening agency to screen residents and prospective residents to prevent residence by individuals referred to in subsection (3);

(c) a method by which the results of any screening decision made pursuant to rules established under subsection (5)(b) may be appealed by the facility operator or by or on behalf of a resident or prospective resident;

(d) standards for operating a category A personal-care facility, including standards for the physical, structural, environmental, sanitary, infection control, dietary, social, staffing, and recordkeeping components of a facility; and

(e) standards for operating a category B personal-care facility, which must include the standards for a category A personal-care facility and additional standards for assessment of residents, care planning, qualifications and training of staff, restraint use and reduction, prevention and care of pressure sores, incontinence care, and the storage and administration of drugs.

History: En. Sec. 2, Ch. 597, L. 1983; amd. Sec. 1, Ch. 140, L. 1985; amd. Sec. 2, Ch. 590, L. 1993; amd. Sec. 5, Ch. 366, L. 1995; amd. Sec. 255, Ch. 546, L. 1995.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

Department of Public Health and Human Services, title 2, ch. 15, part 22.

50-5-227. Licensing personal-care facilities. (1) The department shall by rule adopt standards for licensing and operation of personal-care facilities to implement the provisions of 50-5-225 and 50-5-226.

(2) The following licensing categories must be used by the department in adopting rules under subsection (1):

(a) category A—a facility providing personal care to residents who may not be:

(i) in need of skilled nursing care;

(ii) in need of medical, chemical, or physical restraint;

(iii) nonambulatory or bedridden;

(iv) incontinent to the extent that bowel or bladder control is absent; or

(v) unable to self-administer medications; or

(b) category B—a facility providing personal care to five or fewer residents who may be:

(i) in need of skilled nursing care;

(ii) in need of medical, chemical, or physical restraint;

(iii) nonambulatory or bedridden;

(iv) incontinent to the extent that bowel or bladder control is absent; or

(v) unable to self-administer medications.

(3) The department may by rule establish license fees, inspection fees, and fees for patient screening. Fees must be reasonably related to service costs.

History: En. Sec. 3, Ch. 597, L. 1983; amd. Sec. 3, Ch. 590, L. 1993; amd. Sec. 6, Ch. 366, L. 1995; amd. Sec. 256, Ch. 546, L. 1995.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

Department of Public Health and Human Services, title 2, ch. 15, part 22.

50-5-228. Limited licensing. The department may grant a license that is provisional upon the correction of noncompliance with provisions of 50-5-225 through 50-5-228 or rules adopted pursuant to 50-5-225 through 50-5-228. A provisional license may be granted only for a specific period of time and may not be renewed.

History: En. Sec. 4, Ch. 597, L. 1983; amd. Sec. 208, Ch. 42, L. 1997.

50-5-229. Repealed. Sec. 13, Ch. 415, L. 1993.

History: En. Sec. 5, Ch. 597, L. 1983.

50-5-230. Repealed. Sec. 13, Ch. 415, L. 1993.

History: En. Sec. 6, Ch. 597, L. 1983.

50-5-231. Repealed. Sec. 13, Ch. 415, L. 1993.

History: En. Secs. 2, 3, Ch. 433, L. 1981.

50-5-232. Patient protection account — deposit of funds. (1) There is a patient protection account in the state special revenue fund.

(2) There is deposited in the patient protection account money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source that are intended to be used for the purposes of the account.

(3) The funds deposited in the patient protection account may be used only:

(a) to pay for the costs of a receivership; and

(b) to pay for the cost of department-initiated relocation of residents.

(4) Penalties collected pursuant to part 1 or 2 of this chapter must be deposited in the state general fund.

History: **En. Sec. 7, Ch. 415, L. 1993; amd. Sec. 44, Ch. 422, L. 1997.**

Part 3

Certificate of Need

50-5-301. When certificate of need is required — definitions. (1) Unless a person has submitted an application for and is the holder of a certificate of need granted by the department, the person may not initiate any of the following:

(a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure that exceeds $1.5 million, other than to acquire an existing health care facility. The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort, consulting, and other services) essential to the acquisition, improvement, expansion, or replacement of any plant with respect to which an expenditure is made must be included in determining if the expenditure exceeds $1.5 million.

(b) a change in the bed capacity of a health care facility through an increase in the number of beds or a relocation of beds from one health care facility or site to another, unless:

(i) the number of beds involved is 10 or less or 10% or less of the licensed beds, if fractional, rounded down to the nearest whole number, whichever figure is smaller, and no beds have been added or relocated during the 2 years prior to the date on which the letter of intent for the proposal is received;

(ii) a letter of intent is submitted to the department; and

(iii) the department determines that the proposal will not significantly increase the cost of care provided or exceed the bed need projected in the state health care facilities plan;

(c) the addition of a health service that is offered by or on behalf of a health care facility that was not offered by or on behalf of the facility within the 12-month period before the month in which the service would be offered and that will result in additional annual operating and amortization expenses of $150,000 or more;

(d) the incurring of an obligation for a capital expenditure by any person or persons to acquire 50% or more of an existing health care facility unless:

(i) the person submits the letter of intent required by 50-5-302(2); and

(ii) the department finds that the acquisition will not significantly increase the cost of care provided or increase bed capacity;

(e) the construction, development, or other establishment of a health care facility that is being replaced or that did not previously exist, by any person, including another type of health care facility;

(f) the expansion of the geographical service area of a home health agency;

(g) the use of hospital beds in excess of five to provide services to patients or residents needing only skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as those levels of care are defined in 50-5-101; or

(h) the provision by a hospital of services for ambulatory surgical care through an outpatient center for surgical services, as defined in subsection (2)(a), home health care, long-term care, inpatient chemical dependency treatment, or inpatient rehabilitation.

(2) For purposes of this part, the following definitions apply:

(a) "Health care facility" or "facility" means a nonfederal home health agency, long-term care facility, inpatient chemical dependency facility, rehabilitation facility with inpatient services, or outpatient center for surgical services that has or is intended to qualify for medicare certification as an ambulatory surgical center pursuant to 42 CFR, part 416. The term does not include:

(i) a hospital, except to the extent that a hospital is subject to certificate of need requirements pursuant to subsection (1)(h); or

(ii) an office of a private physician, dentist, or other physical or mental health care professionals, including chemical dependency counselors.

(b) (i) "Long-term care facility" means an entity that provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as defined in 50-5-101, to a total of two or more individuals.

(ii) The term does not include residential care facilities, as defined in 50-5-101; community homes for persons with developmental disabilities, licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; boarding or foster homes for children, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals not requiring institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(3) This section may not be construed to require a health care facility to obtain a certificate of need for a nonreviewable service that would not be subject to a certificate of need if undertaken by a person other than a health care facility.

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(1); amd. Sec. 3, Ch. 37, L. 1979; amd. Sec. 12, Ch. 347, L. 1979; amd. Sec. 2, Ch. 329, L. 1983; amd. Sec. 2, Ch. 140, L. 1985; amd. Sec. 3, Ch. 450, L. 1987; amd. Sec. 2, Ch. 477, L. 1987; amd. Sec. 14, Ch. 330, L. 1989; amd. Sec. 1, Ch. 377, L. 1989; amd. Sec. 1, Ch. 244, L. 1991; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 2, Ch. 764, L. 1991; amd. Sec. 4, Ch. 590, L. 1993; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 7, Ch. 366, L. 1995; amd. Sec. 3, Ch. 398, L. 1995; amd. Sec. 257, Ch. 546, L. 1995; amd. Sec. 4, Ch. 93, L. 1997; amd. Sec. 5, Ch. 98, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 98 in (1)(h) inserted "through an outpatient center for surgical services, as defined in subsection (2)(a)"; in (2)(a) near beginning after "nonfederal" deleted "ambulatory surgical facility" and inserted "or outpatient center for surgical services that has or is intended to qualify for medicare certification as an ambulatory surgical center pursuant to 42 CFR, part 416"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 7, Ch. 98, L. 1999, provided: "[This act] applies to health care facility licenses or certificates of need issued pursuant to Title 50, chapter 5, after October 1, 1999."

Cross-References

County power to erect and manage hospitals and nursing homes, to lease property for hospital purposes, and to erect and operate joint county hospital or nursing home with another county, 7-8-2102; Title 7, ch. 34, part 22; 7-34-2301; Title 7, ch. 34, part 25.

Municipal power to establish detention hospital to prevent spread of disease, 7-34-4101.

50-5-302. Letter of intent — application and review process. (1) The department may adopt rules including but not limited to rules for:

(a) the form and content of letters of intent and applications;

(b) the scheduling of reviews;

(c) the format of public informational hearings and reconsideration hearings;

(d) the circumstances under which applications may be comparatively reviewed; and

(e) the circumstances under which a certificate of need may be approved for the use of hospital beds to provide skilled nursing care, intermediate nursing care, or intermediate developmental disability care to patients or residents needing only that level of care.

(2) At least 30 days before any person or persons acquire or enter into a contract to acquire 50% or more of an existing health care facility, they shall submit to the department a letter noting intent to acquire the facility and of the services to be offered in the facility and its bed capacity.

(3) Any person intending to initiate an activity for which a certificate of need is required shall submit a letter of intent to the department.

(4) The department may determine that the proposals should be comparatively reviewed with similar proposals that are also subject to review.

(5) On the 10th day of each month, the department shall publish in a newspaper of general circulation in the area to be served by the proposal a description of each letter of intent received by the department during the preceding calendar month. Within 30 days of the publication, any person who desires comparative review with a proposal described in the publication must submit a letter of intent requesting comparative review.

(6) The department shall give to each person submitting a letter of intent written notice of the deadline for submission of an application for certificate of need, which will be no less than 30 days after the notice is sent.

(7) Within 20 working days after receipt of an application, the department shall determine whether it is complete and, if the application is found incomplete, shall send a written request to the applicant specifying the necessary additional information and a date by which the additional information must be submitted to the department. The department shall allow at least 15 days after the mailing of its written request for the submission of the additional information. Upon receipt of the additional information from the applicant, the department has an additional 15 working days to determine if the application is complete and, if the application is still incomplete, to send a notice to the applicant that the application is incomplete.

(8) If the applicant fails to submit the necessary additional information requested by the department by the deadline prescribed by the department, the application is considered withdrawn.

(9) If the department fails to send either the request for additional information or the notice of incompleteness required by subsection (7) within the period prescribed in subsection (7), the application is considered to be

complete on the last day of the time period during which the notice should have been sent.

(10) The review period for an application may be no longer than 90 calendar days after the application is initially received or, if the application is to be comparatively reviewed as provided in subsection (5), within 90 days after all applications to be comparatively reviewed are received. A longer period is permitted with the consent of all affected applicants.

(11) During the review period a public hearing may be held if requested by an affected person or when considered appropriate by the department.

(12) Each completed application may be considered in relation to other applications pertaining to similar types of facilities affecting the same health service area.

(13) The department shall, after considering all comments received during the review period, issue a certificate of need, with or without conditions, or deny the application. The department shall notify the applicant and affected persons of its decision within 5 working days after expiration of the review period.

(14) If the department fails to reach a decision and notify the applicant of its decision within the deadlines established in this section and if that delay constitutes an abuse of the department's discretion, the applicant may apply to district court for a writ of mandamus to force the department to issue the certificate of need.

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(part); amd. Sec. 13, Ch. 347, L. 1979; amd. Sec. 3, Ch. 329, L. 1983; amd. Sec. 1, Ch. 26, L. 1985; amd. Sec. 3, Ch. 140, L. 1985; amd. Sec. 3, Ch. 477, L. 1987; amd. Sec. 4, Ch. 398, L. 1995; amd. Sec. 5, Ch. 93, L. 1997.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

50-5-303. Repealed. Sec. 27, Ch. 347, L. 1979.

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(part).

50-5-304. Review criteria, required findings, and standards. The department shall by rule promulgate and use, as appropriate, specific criteria for reviewing certificate of need applications under this chapter, including but not limited to the following considerations and required findings:

(1) the degree to which the proposal being reviewed:

(a) demonstrates that the service is needed by the population within the service area defined in the proposal;

(b) provides data that demonstrates the need for services contrary to the current state health care facilities plan, including but not limited to waiting lists, projected service volumes, differences in cost and quality of services, and availability of services; or

(c) is consistent with the current state health care facilities plan;

(2) the need that the population served or to be served by the proposal has for the services;

(3) the availability of less costly quality-equivalent or more effective alternative methods of providing the services;

(4) the immediate and long-term financial feasibility of the proposal as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the health service;

(5) the relationship and financial impact of the services proposed to be provided to the existing health care system of the area in which the services are proposed to be provided;

(6) the consistency of the proposal with joint planning efforts by health care providers in the area;

(7) the availability of resources, including health and management personnel and funds for capital and operating needs, for the provision of services proposed to be provided and the availability of alternative uses of the resources for the provision of other health services;

(8) the relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services;

(9) in the case of a construction project, the costs and methods of the proposed construction, including the costs and methods of energy provision, and the probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project;

(10) the distance, convenience, cost of transportation, and accessibility of health services for persons who live outside urban areas in relation to the proposal; and

(11) in the case of a project to add long-term care facility beds:

(a) the need for the beds that takes into account the current and projected occupancy of long-term care beds in the community;

(b) the current and projected population over 65 years of age in the community; and

(c) other appropriate factors.

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(3), (4); amd. Sec. 14, Ch. 347, L. 1979; amd. Sec. 4, Ch. 329, L. 1983; amd. Sec. 4, Ch. 477, L. 1987; amd. Sec. 5, Ch. 398, L. 1995; amd. Sec. 6, Ch. 93, L. 1997.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Department of Public Health and Human Services, Title 2, ch. 15, part 22.

Medical assistance — Medicaid, Title 53, ch. 6, part 1.

50-5-305. Period of validity of approved application. (1) A certificate of need expires:

(a) 1 year after the decision to issue it is final if the applicant has not commenced construction on a project requiring construction or has not incurred an enforceable capital expenditure commitment for a project not requiring construction;

(b) 1 year after the date the project is commenced plus the estimated period of time for completion shown in the application if the approved project is not complete; or

(c) when the department determines, after opportunity for a hearing, that the holder of the certificate of need has violated the provisions of this chapter, rules adopted under this chapter, or the terms of the certificate of need.

(2) For purposes of subsection (1)(a), if a reconsideration hearing is granted or an appeal filed under 50-5-306, the final decision will be that following the hearing or resolving the appeal.

(3) The holder of an unexpired certificate of need subject to expiration under the circumstances specified in subsection (1)(a) or (1)(b) may apply to the department to extend the term of the certificate of need for one additional period not to exceed 6 months. The department may grant an extension upon the applicant's demonstrating good cause as defined by department rule.

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(5); amd. Sec. 15, Ch. 347, L. 1979; amd. Sec. 5, Ch. 329, L. 1983; amd. Sec. 5, Ch. 477, L. 1987; amd. Sec. 7, Ch. 93, L. 1997.

50-5-306. Right to hearing and appeal. (1) An affected person may request a contested case hearing before the department under the provisions of Title 2, chapter 4, by filing a written request with the department within 30 days after receipt of the notification required in 50-5-302(13). The written request for a hearing must include:

(a) a statement describing each finding and conclusion in the department's initial decision that will be contested at the hearing and why each finding and conclusion is objectionable or in error; and

(b) a summary of the evidence that will be submitted to contest the findings and conclusion identified in subsection (1)(a).

(2) The hearing must be limited to the issues identified under subsection (1) and any other issues identified through discovery.

(3) The public hearing must be held within 30 calendar days after the request is received unless the hearings examiner extends the time limit for good cause.

(4) The department shall make its final decision and serve the appellant with written findings of fact and conclusions of law in support of the decision within 30 days after the conclusion of the hearing unless the parties to the hearing agree to a different date.

(5) Any adversely affected person who was a party to the hearing may appeal the department's final decision to the district court as provided in Title 2, chapter 4, part 7.

(6) On application by a person whose proposal has been approved under the procedure provided for in 50-5-302, a district court may order a person who requested a contested case hearing to pay the successful applicant's costs and attorney fees incurred in the hearing and on appeal, if the court determines that the reasons for requesting the contested case hearing were frivolous.

(7) The department may by rule prescribe in greater detail the hearing and appellate procedures.

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(6); amd. Sec. 16, Ch. 347, L. 1979; amd. Sec. 6, Ch. 329, L. 1983; amd. Sec. 2, Ch. 26, L. 1985; amd. Sec. 6, Ch. 477, L. 1987; amd. Sec. 6, Ch. 398, L. 1995; amd. Sec. 8, Ch. 93, L. 1997.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

50-5-307. Civil penalty — injunction. (1) A person who violates the terms of 50-5-301 is subject to a civil penalty of not less than $1,000 or more than $10,000. Each day of violation constitutes a separate offense. The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may petition the district court to impose, assess, and recover the civil penalty. Money collected as a civil penalty shall be deposited in the state general fund.

(2) The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may bring an action to enjoin a violation of 50-5-301, in addition to or exclusive of the remedy in subsection (1).

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(part); amd. Sec. 17, Ch. 347, L. 1979.

Cross-References

Duties of County Attorney relating to state matters, 7-4-2716.

Injunctive relief provided, Title 27, ch. 19.

50-5-308. Special circumstances. The department shall issue a certificate of need for a proposed capital expenditure if:

(1) the capital expenditure is required to eliminate or prevent imminent safety hazards as defined by federal, state, or local fire, building, or life safety codes or regulations or to comply with state licensure, certification, or accreditation standards; and

(2) the department has determined that the facility or service for which the capital expenditure is proposed is needed and that the obligation of the capital expenditure is consistent with the state health care facilities plan.

History: En. Sec. 18, Ch. 347, L. 1979; amd. Sec. 7, Ch. 329, L. 1983; amd. Sec. 9, Ch. 93, L. 1997.

Cross-References

State fire prevention and investigation program, Title 50, ch. 3.

Fire protection equipment, Title 50, ch. 39.

Building construction standards, Title 50, ch. 60.

50-5-309. Exemptions from certificate of need review. The following are exempt from a certificate of need review:

(1) construction of a state-owned facility; and

(2) repair or replacement of a facility damaged or destroyed as a result of fire, storm, civil disturbance, or an act of God if the use of the facility after repair or replacement is within the scope of the facility's original license issued pursuant to Title 50, chapter 5, part 2.

History: En. Sec. 9, Ch. 329, L. 1983; amd. Sec. 7, Ch. 477, L. 1987; amd. Sec. 10, Ch. 93, L. 1997.

50-5-310. Fees. (1) There is no fee for filing a letter of intent.

(2) An application for certificate of need approval must be accompanied by a fee that is at least equal to 0.3% of the capital expenditure projected in the application, except that the fee may not be less than $500.

(3) Fees collected under this section must be deposited in the general fund.

History: En. Sec. 8, Ch. 477, L. 1987; amd. Sec. 1, Ch. 538, L. 1993; amd. Sec. 7, Ch. 398, L. 1995; amd. Sec. 11, Ch. 93, L. 1997.

50-5-311 through 50-5-315 reserved.

50-5-316. Repealed. Sec. 20, Ch. 93, L. 1997.

History: En. Sec. 3, Ch. 616, L. 1989.

50-5-317. Repealed. Sec. 4, Ch. 764, L. 1991.

History: En. Sec. 4, Ch. 616, L. 1989.

Part 4

State Plans and Programs — Federal Aid (Repealed)

50-5-401. Repealed. Sec. 27, Ch. 347, L. 1979.

History: (1)En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; (2) thru (7)En. Sec. 180, Ch. 197, L. 1967; amd. Sec. 76, Ch. 349, L. 1974; Sec. 69-5301, R.C.M. 1947; R.C.M. 1947, 69-4102(2), 69-5301.

50-5-402 through 50-5-411. Repealed. Sec. 1, Ch. 8, L. 1997.

Compiler's Comments

Histories of Repealed Sections:

50-5-402. En. Sec. 181, Ch. 197, L. 1967; amd. Sec. 77, Ch. 349, L. 1974; R.C.M. 1947, 69-5302(part); amd. Sec. 19, Ch. 347, L. 1979.

50-5-403. En. Sec. 187, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5308.

50-5-404. En. Secs. 182, 183, 184, 186, Ch. 197, L. 1967; amd. Secs. 78, 79, 80, 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5303, 69-5304, 69-5305(part), 69-5307; amd. Sec. 20, Ch. 347, L. 1979.

50-5-405. En. Sec. 181, Ch. 197, L. 1967; amd. Sec. 77, Ch. 349, L. 1974; R.C.M. 1947, 69-5302(part); amd. Sec. 21, Ch. 347, L. 1979.

50-5-406. En. Secs. 184, 190, Ch. 197, L. 1967; amd. Secs. 79, 107, 111, Ch. 349, L. 1974; R.C.M. 1947, 69-5305(part), 69-5311.

50-5-407. En. Sec. 185, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5306.

50-5-408. En. Sec. 188, Ch. 197, L. 1967; R.C.M. 1947, 69-5309; amd. Sec. 22, Ch. 347, L. 1979.

50-5-409. En. Sec. 189, Ch. 197, L. 1967; amd. Secs. 107 and 111, Ch. 349, L. 1974; R.C.M. 1947, 69-5310(part).

50-5-410. En. Sec. 189, Ch. 197, L. 1967; amd. Secs. 107 and 111, Ch. 349, L. 1974; R.C.M. 1947, 69-5310(part).

50-5-411. En. Sec. 191, Ch. 197, L. 1967; R.C.M. 1947, 69-5312; amd. Sec. 23, Ch. 347, L. 1979.

50-5-412. Repealed. Sec. 27, Ch. 347, L. 1979.

History: En. Sec. 192, Ch. 197, L. 1967; R.C.M. 1947, 69-5313.

50-5-413 through 50-5-420 reserved.

50-5-421 through 50-5-424. Repealed. Sec. 156, Ch. 370, L. 1987.

Compiler's Comments

Histories of Repealed Sections:

50-5-421 through 50-5-424. En. Secs. 1 through 4, Ch. 668, L. 1983.

Part 5

Right to Refuse Participation in Sterilization

50-5-501. Definitions. As used in this part:

(1) "person" includes one or more individuals, partnerships, associations, and corporations;

(2) "sterilization" means the performance of, assistance or participation in the performance of, or submission to an act or operation intended to eliminate an individual's reproductive capacity.

History: En. 69-5222 by Sec. 1, Ch. 247, L. 1974; R.C.M. 1947, 69-5222.

50-5-502. Refusal by hospital or health care facility to participate in sterilization. (1) No private hospital or health care facility shall be required, contrary to the religious or moral tenets or the stated religious beliefs or moral convictions of such hospital or facility as stated by its governing body or board, to admit any person for the purpose of sterilization or to permit the use of its facilities for such purpose.

(2) Such refusal shall not give rise to liability of such hospital or health care facility or any personnel or agent or governing board thereof to any person for damages allegedly arising from such refusal or be the basis for any discriminatory, disciplinary, or other recriminatory action against such hospital or health care facility or any personnel, agent, or governing board thereof.

History: En. 69-5223 by Sec. 2, Ch. 247, L. 1974; R.C.M. 1947, 69-5223(1).

Cross-References

Freedom of religion, Art. 11, sec. 5, Mont. Const.

Liability, Title 27, ch. 1, part 7.

Right to refuse participation in abortion, 50-20-111.

50-5-503. Refusal by individual to participate in sterilization. (1) All persons shall have the right to refuse to advise concerning, perform, assist, or participate in sterilization because of religious beliefs or moral convictions.

(2) If requested by any hospital or health care facility or person desiring sterilization, such refusal shall be in writing signed by the person refusing but may refer generally to the grounds of "religious beliefs and moral convictions".

(3) The refusal of any person to advise concerning, perform, assist, or participate in sterilization shall not be a consideration in respect of staff privileges of any hospital or health care facility or a basis for any discriminatory, disciplinary, or other recriminatory action against such person, nor shall such person be liable to any person for damages allegedly arising from refusal.

History: En. 69-5223 by Sec. 2, Ch. 247, L. 1974; R.C.M. 1947, 69-5223(2).

Cross-References

Freedom of religion, Art. II, sec. 5, Mont. Const.

Liability, Title 27, ch. 1, part 7.

Right to refuse participation in abortion, 50-20-111.

50-5-504. Unlawful to interfere with right of refusal. (1) It shall be unlawful to interfere or attempt to interfere with the right of refusal authorized by this part, whether by duress, coercion, or any other means.

(2) The person injured thereby shall be entitled to injunctive relief, when appropriate, and shall further be entitled to monetary damages for injuries suffered.

History: En. 69-5223 by Sec. 2, Ch. 247, L. 1974; R.C.M. 1947, 69-5223(3).

Cross-References

Injunctions, Title 27, ch. 19.

Termination of employment, Title 39, ch. 2, part 5.

50-5-505. Refusal not grounds for loss of privileges, immunities, or public benefits. Such refusal by any hospital or health care facility or person shall not be grounds for loss of any privileges or immunities to which the granting of consent may otherwise be a condition precedent or for the loss of any public benefits.

History: En. 69-5223 by Sec. 2, Ch. 247, L. 1974; R.C.M. 1947, 69-5223(4).

Part 6
Family Practice Residency Training

Part Cross-References
Western Regional Higher Education Compact, Title 20, ch. 25, part 8.
Licensing of physicians, Title 37, ch. 3.

50-5-601. Short title. This part may be cited as the "Family Practice Training Act of 1985".

History: En. Sec. 1, Ch. 649, L. 1985.

50-5-602. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Family practice" means comprehensive medical care with particular emphasis on the family unit, in which the physician's continuing responsibility for health care is not limited by the patient's age or sex or by a particular organ system or disease entity.

(3) "Residency training" means a community-based family practice program to train family practice resident physicians, sponsored by one or more community hospitals and physicians in Montana, for inpatient and outpatient training.

(4) "Resident physician" means any physician in advanced medical specialty training.

History: En. Sec. 2, Ch. 649, L. 1985; amd. Sec. 93, Ch. 418, L. 1995; amd. Sec. 258, Ch. 546, L. 1995.

50-5-603. Montana family practice training program. (1) There is a Montana family practice training program to train resident physicians in family practice.

(2) The program is under the authority of the department, and the department shall contract with a nonprofit corporation organized under the laws of Montana or certified to do business in Montana, to coordinate the training of family practice resident physicians. The officers and directors of the corporation must be qualified by education, experience, and interest to administer and oversee family practice resident physician training activity.

History: En. Sec. 3, Ch. 649, L. 1985; amd. Sec. 1, Ch. 140, L. 1993.

50-5-604 through 50-5-610 reserved.

50-5-611. Funding limitations. (1) Money appropriated for residency training is in addition to any other money appropriated for medical educational programs and may not supplant funds for existing medical educational programs.

(2) No funds appropriated by the legislature to fund residency training may subsidize the cost incurred by patients.

History: En. Sec. 4, Ch. 649, L. 1985.

Parts 7 through 10 reserved

Part 11

Long-Term Health Care Facilities

50-5-1101. Short title. This part may be cited as the "Montana Long-Term Care Residents' Bill of Rights".

History: En. Sec. 1, Ch. 582, L. 1987.

50-5-1102. Findings and purpose. (1) The legislature finds and declares that many residents of long-term care facilities are isolated from the community and lack the means to assert their rights.

(2) The purpose of this part is to:

(a) establish and recognize the fundamental civil and human rights to which residents of long-term care facilities are entitled; and

(b) provide for the education of residents and staff regarding these rights.

History: En. Sec. 2, Ch. 582, L. 1987.

50-5-1103. Definitions. As used in this part, the following definitions apply:

(1) "Administrator" means a person who is licensed as a nursing home administrator under Title 37, chapter 9, and who administers, manages, or supervises a long-term care facility.

(2) "Authorized representative" means:

(a) a person who has a general power of attorney for a resident;

(b) a person appointed by a court to manage the personal or financial affairs of a resident;

(c) a representative payee;

(d) a resident's next of kin; or

(e) a sponsoring agency.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Facility" or "long-term care facility" means a facility or part of a facility licensed under Title 50, chapter 5, to provide skilled nursing care, intermediate nursing care, or personal care.

(5) "Long-term care ombudsman" means the individual appointed to fulfill the requirement of 42 U.S.C. 3027(a)(12) that the state provide an advocate for residents of long-term care facilities.

(6) "Resident" means a person who lives in a long-term care facility.

History: En. Sec. 3, Ch. 582, L. 1987; amd. Sec. 94, Ch. 418, L. 1995; amd. Sec. 259, Ch. 546, L. 1995.

50-5-1104. Rights of long-term care facility residents. (1) The state adopts by reference for all long-term care facilities the rights for long-term care facility residents applied by the federal government to facilities that provide skilled nursing care or intermediate nursing care and participate in a medicaid or medicare program (42 U.S.C. 1395i-3(a) and 1396r(a), as implemented by regulation).

(2) In addition to the rights adopted under subsection (1), the state adopts for all residents of long-term care facilities the following rights:

(a) A resident or the resident's authorized representative must be informed by the facility at least 30 days in advance of any changes in the cost or availability of services, unless to do so is beyond the facility's control.

(b) Regardless of the source of payment, each resident or the resident's authorized representative is entitled, upon request, to receive and examine an explanation of the resident's monthly bill.

(c) Residents have the right to organize, maintain, and participate in resident advisory councils. The facility shall afford reasonable privacy and facility space for the meetings of the councils.

(d) A resident has the right to present a grievance on the resident's own behalf or that of others to the facility or the resident advisory council. The facility shall establish written procedures for receiving, handling, and informing residents or the resident advisory council of the outcome of any grievance presented.

(e) A resident has the right to ask a state agency or a resident advocate for assistance in resolving grievances, free from restraint, interference, or reprisal.

(f) During a resident's stay in a long-term care facility, the resident retains the prerogative to exercise decisionmaking rights in all aspects of the resident's health care, including placement and treatment issues such as medication, special diets, or other medical regimens.

(g) The resident's authorized representative must be notified in a prompt manner of any significant accident, unexplained absence, or significant change in the resident's health status.

(h) A resident has the right to be free from verbal, mental, and physical abuse, neglect, or financial exploitation. Facility staff shall report to the department and the long-term care ombudsman any suspected incidents of abuse under the Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, Title 52, chapter 3, part 8.

(i) Each resident has the right to privacy in the resident's room or portion of the room. If a resident is seeking privacy in the resident's room, staff members should make reasonable efforts to make their presence known when entering the room.

(j) In case of involuntary transfer or discharge, a resident has the right to reasonable advance notice to ensure an orderly transfer or discharge. Reasonable advance notice requires at least 21 days' written notification of any interfacility transfer or discharge except in cases of emergency or for medical reasons documented in the resident's medical record by the attending physician.

(k) If clothing is provided to the resident by the facility, it must be of reasonable fit.

(l) A resident has the right to reasonable safeguards for personal possessions brought to the facility. The facility shall provide a means for safeguarding the resident's small items of value in the resident's room or in another part of the facility where the resident must have reasonable access to the items.

(m) The resident has the right to have all losses or thefts of personal possessions promptly investigated by the facility. The results of the investigation must be reported to the affected resident.

(3) The administrator of the facility shall adopt whatever additional measures are necessary to implement the residents' rights listed in subsections (1) and (2) and meet any other requirements relating to residents' health and safety that are conditions of participation in a state or federal program of medical assistance.

History: En. Sec. 4, Ch. 582, L. 1987; amd. Sec. 43, Ch. 16, L. 1991; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 209, Ch. 42, L. 1997.

50-5-1105. Long-term care facility to adopt and post residents' rights. (1) The administrator of each long-term care facility shall:

(a) adopt a written statement of rights applicable to all residents of its facility, including as a minimum the rights listed in 50-5-1104;

(b) provide each resident, at the time of his admission to the facility, a copy of the facility's statement of residents' rights, receipt of which the resident or his authorized representative shall acknowledge in writing;

(c) provide each resident with a written statement of any change in residents' rights at the time the change is implemented, receipt of which the resident or his authorized representative shall acknowledge in writing; and

(d) train and involve staff members in the implementation of residents' rights as expressed in the statement adopted by the facility.

(2) Each staff member shall affirm in writing that he has read and understands the facility's statement of residents' rights.

(3) The administrator of the facility shall post in a conspicuous place visible to the public a copy of the facility's statement of residents' rights, presented in a format that can be read easily by the residents and by the public.

History: En. Sec. 5, Ch. 582, L. 1987.

50-5-1106. Resident's rights devolve to authorized representative. The rights and responsibilities listed in 50-5-1104 and 50-5-1105 devolve to the resident's authorized representative when the resident:

(1) exhibits a communication barrier;

(2) has been found by his physician to be medically incapable of understanding these rights; or

(3) has been adjudicated incompetent by a district court.

History: En. Sec. 6, Ch. 582, L. 1987.

50-5-1107. Enforcement of residents' rights. The requirements of 50-5-1104 through 50-5-1106 are included in the minimum standards considered by the department in reviewing applications for license, as provided in 50-5-204.

History: En. Sec. 7, Ch. 582, L. 1987.

CHAPTER 6

EMERGENCY MEDICAL SERVICES

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Chapter Cross-References

Good Samaritan law, 27-1-714, 41-1-405.

Validity of consent for medical treatment, Title 41, ch. 1, part 4.

Part 1
Development of Program

50-6-101. Legislative purpose. The public welfare requires the providing of assistance and encouragement for the development of a comprehensive emergency medical services program for Montanans who each year are dying and suffering permanent disabilities needlessly because of inadequate emergency medical services. The repeated loss of persons who die unnecessarily because necessary life-support personnel and equipment are not available to victims of accidents and sudden illness is a tragedy that can and must be eliminated. The development of an emergency medical services program is in the interest of the social well-being and health and safety of the state and all its people.

History: En. 69-7001 by Sec. 1, Ch. 311, L. 1974; R.C.M. 1947, 69-7001.

50-6-102. Department to establish and administer program. The department of public health and human services shall establish and administer an emergency medical services program.

History: En. 69-7002 by Sec. 2, Ch. 311, L. 1974; amd. Sec. 38, Ch. 213, L. 1975; R.C.M. 1947, 69-7002(part); amd. Sec. 95, Ch. 418, L. 1995; amd. Sec. 260, Ch. 546, L. 1995.

Cross-References

Department of Public Health and Human Services, Title 2, ch. 15, part 22.

50-6-103. Powers of department. (1) The department of public health and human services is authorized to confer and cooperate with any other persons, organizations, and governmental agencies that have an interest in emergency medical services problems and needs.

(2) The department is authorized to accept, receive, expend, and administer any funds that are now available or that may be donated, granted, or appropriated to the department.

(3) The department may, after consultation with the trauma care committee, the Montana committee on trauma of the American college of surgeons, the Montana hospital association, and the Montana medical association, adopt rules necessary to implement part 4 of this chapter.

History: En. 69-7002 by Sec. 2, Ch. 311, L. 1974; amd. Sec. 38, Ch. 213, L. 1975; R.C.M. 1947, 69-7002(part); amd. Sec. 96, Ch. 418, L. 1995; amd. Sec. 261, Ch. 546, L. 1995; amd. Sec. 11, Ch. 579, L. 1995; amd. Sec. 3, Ch. 171, L. 1997.

50-6-104. Interdepartmental cooperation required. The department of public health and human services, the department of justice, and other interested departments or divisions shall develop in writing a mutually agreeable plan of cooperation so that governmental effort will not be duplicated and governmental resources will be applied on a reasonable priority basis.

History: En. 69-7002 by Sec. 2, Ch. 311, L. 1974; amd. Sec. 38, Ch. 213, L. 1975; R.C.M. 1947, 69-7002(part); amd. Sec. 8, Ch. 274, L. 1981; amd. Sec. 97, Ch. 418, L. 1995; amd. Sec. 262, Ch. 546, L. 1995.

Cross-References

Department of Justice, Title 2, ch. 15, part 20.

Department of Public Health and Human Services, Title 2, ch. 15, part 22.

Part 2
Emergency Medical Technicians

Part Cross-References

Workers' compensation — regulation of fees, 39-71-704.

Report of fetal death that occurs outside licensed medical facility, 46-4-114.

50-6-201. Legislative findings. The legislature finds and declares that prompt and efficient emergency medical care of the sick and injured at the scene and during transport to a health care facility is an important ingredient necessary for reduction of the mortality and morbidity rate during the first critical minutes immediately after an accident or the onset of an emergent condition and that a program for emergency medical technicians is required in order to provide the safest and most efficient delivery of emergency care.

History: En. 69-7003 by Sec. 1, Ch. 84, L. 1975; R.C.M. 1947, 69-7003.

50-6-202. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of medical examiners, department of commerce.

(2) "Emergency medical technician" means a person who has been specially trained in emergency care in a training program approved by the state board of medical examiners and certified by the board as having demonstrated a level of competence suitable to treat victims of injury or other emergent condition.

History: En. 69-7004 by Sec. 2, Ch. 84, L. 1975; R.C.M. 1947, 69-7004; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 377, L. 1991.

Cross-References

Board of Medical Examiners, Title 37, ch. 3, part 2.

50-6-203. Rules. (1) The board, after consultation with the department of public health and human services, the department of justice, and other appropriate departments, associations, and organizations, shall adopt rules of the board implementing this part, including but not limited to training and certification of emergency medical technicians and administration of drugs.

(2) The board may, by rule, establish various levels of emergency medical technician certification and shall specify for each level the training requirements, acts allowed, recertification requirements, and any other requirements regarding the training, performance, or certification of that level of emergency medical technician that it considers necessary.

History: En. 69-7008 by Sec. 6, Ch. 84, L. 1975; R.C.M. 1947, 69-7008; amd. Sec. 8, Ch. 274, L. 1981; amd. Sec. 2, Ch. 377, L. 1991; amd. Sec. 98, Ch. 418, L. 1995; amd. Sec. 263, Ch. 546, L. 1995.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Department of Justice, Title 2, ch. 15, part 20.

Department of Public Health and Human Services, Title 2, ch. 15, part 22.

50-6-204. Repealed. Sec. 4, Ch. 377, L. 1991.

History: En. 69-7005 by Sec. 3, Ch. 84, L. 1975; R.C.M. 1947, 69-7005.

50-6-205. Repealed. Sec. 4, Ch. 377, L. 1991.

History: En. 69-7006, 69-7007 by Secs. 4, 5, Ch. 84, L. 1975; R.C.M. 1947, 69-7006, 69-7007.

50-6-206. Consent. No emergency medical technician may be subject to civil liability for failure to obtain consent in performing acts as authorized herein to any individual regardless of age where the patient is unable to give consent and there is no other person present legally authorized to consent, provided that such acts are in good faith and without knowledge of facts negating consent.

History: En. 69-7009 by Sec. 7, Ch. 84, L. 1975; R.C.M. 1947, 69-7009.

Cross-References

Good Samaritan law, 27-1-714, 41-1-405.

50-6-207. Construction. This part may not be construed to detract from the powers granted to the department of public health and human services to regulate emergency medical services provided for in part 3 of this chapter.

History: En. 69-7010 by Sec. 8, Ch. 84, L. 1975; R.C.M. 1947, 69-7010; amd. Sec. 3, Ch. 377, L. 1991; amd. Sec. 99, Ch. 418, L. 1995; amd. Sec. 264, Ch. 546, L. 1995.

Part 3

Ambulance Service Licensing

Part Cross-References

Establishment of ambulance services by county, city, or town, Title 7, ch. 34, part 1.

Discrimination in licensing prohibited, 49-3-204.

50-6-301. Findings. The legislature finds and declares that:

(1) the public welfare requires the establishment of minimum uniform standards for the operation of emergency medical services;

(2) the control, inspection, and regulation of persons providing emergency medical services is necessary to prevent or eliminate improper care that may endanger the health of the public; and

(3) the regulation of emergency medical care services is in the interest of the social well-being and the health and safety of the state and all its people.

History: En. Sec. 1, Ch. 387, L. 1971; R.C.M. 1947, 69-3604; amd. Sec. 1, Ch. 387, L. 1989.

50-6-302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Aircraft" has the same meaning given in 67-1-101. The term includes any fixed-wing airplane or helicopter.

(2) (a) "Ambulance" means a privately or publicly owned motor vehicle or aircraft that is maintained and used for the transportation of patients.

(b) The term does not include:

(i) a motor vehicle or aircraft owned by or operated under the direct control of the United States; or

(ii) air transportation services, such as charter or fixed-based operators, that are regulated by the federal aviation administration and that offer no special medical services or provide only transportation to patients or persons at the direction or under the supervision of an independent physician.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Emergency medical service" means a prehospital or interhospital emergency medical transportation or treatment service provided by an ambulance or nontransporting medical unit.

(5) "Medical control" means the function of a licensed physician in providing direction, advice, or orders to an emergency medical service provider.

(6) "Nontransporting medical unit" means an aggregate of persons who are organized to respond to a call for emergency medical service and to treat a patient until the arrival of an ambulance. Nontransporting medical units provide any one of varying types and levels of service defined by department rule but may not transport patients.

(7) "Offline medical director" means a physician who is responsible and accountable for the overall medical direction and medical supervision of an emergency medical service and who is responsible for the proper application of patient care techniques and the quality of care provided by the emergency medical services personnel. The term includes only a physician who volunteers the physician's services as an offline medical director or whose total reimbursement for those services in any 12-month period does not exceed $5,000.

(8) (a) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

(b) The term does not include an individual who is nonambulatory and who needs transportation assistance solely because that individual is confined to a wheelchair as the individual's usual means of mobility.

(9) "Person" means an individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including a governmental agency other than the United States.

History: En. Sec. 2, Ch. 387, L. 1971; amd. Sec. 11, Ch. 349, L. 1974; amd. Sec. 1, Ch. 86, L. 1977; R.C.M. 1947, 69-3605; amd. Sec. 2, Ch. 387, L. 1989; amd. Sec. 1, Ch. 304, L. 1991; amd. Sec. 100, Ch. 418, L. 1995; amd. Sec. 265, Ch. 546, L. 1995.

50-6-303. Repealed. Sec. 17, Ch. 387, L. 1989.

History: En. Sec. 6, Ch. 387, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-3609(1), (2).

50-6-304. Cooperative agreements — gifts, grants, and donations. (1) The department may enter into cooperative agreements with any of the state agencies or political subdivisions for the purpose of carrying out the provisions of this part.

(2) The department may accept and administer any gift, grant, or donation of funds to carry out the purposes of this part.

History: En. Sec. 6, Ch. 387, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-3609(3); amd. Sec. 4, Ch. 387, L. 1989.

50-6-305. Repealed. Sec. 17, Ch. 387, L. 1989.

History: En. Sec. 6, Ch. 387, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-3609(4).

50-6-306. License required. (1) A person may not conduct or operate an emergency medical service without first obtaining a license from the department. A separate license is required for each type and level of service.

(2) Applications for a license must be made in writing to the department on forms specified by the department.

(3) Each license must be issued for a specific term not to exceed 2 years. Renewal may be obtained by paying the required license fee and demonstrating compliance with department rules.

(4) The license is not transferable.

History: En. Secs. 3, 4, Ch. 387, L. 1971; R.C.M. 1947, 69-3606, 69-3607(2); amd. Sec. 5, Ch. 387, L. 1989.

50-6-307. License fee. (1) There must be paid to the department, with each application for a license or for renewal of a license, a license fee of $35.

(2) The department shall deposit fees with the state treasurer to the credit of the state general fund.

(3) Payment of the license fee stipulated in this part must be accepted in lieu of any and all existing state fees and charges for like purposes or intent which may be existent prior to the adoption of this part.

History: En. Secs. 4, 10, Ch. 387, L. 1971; R.C.M. 1947, 69-3607(1), 69-3613; amd. Sec. 1, Ch. 592, L. 1983; amd. Sec. 6, Ch. 387, L. 1989.

Cross-References

Fund structure, Title 17, ch. 2.

50-6-308. Cancellation of license. The department may cancel a license if it finds that the licensee has:

(1) violated any provision of this part or any rule of the department or order of the department; and

(2) failed or refused to remedy or correct the violation.

History: En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(part); amd. Sec. 7, Ch. 387, L. 1989; amd. Sec. 266, Ch. 546, L. 1995.

50-6-309. Repealed. Sec. 17, Ch. 387, L. 1989.

History: En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(part).

50-6-310. Notice and hearing required. (1) The department may not deny or cancel a license without:

(a) delivery to the applicant or licensee of a written statement of the grounds for the denial or cancellation or the charge involved;

(b) an opportunity to answer at a hearing before the department to show cause, if any, why the license should not be denied or canceled.

(2) The licensee shall make written request to the department for a hearing within 10 days after notice of the grounds or charges has been received.

History: En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(part); amd. Sec. 267, Ch. 546, L. 1995.

Cross-References

Contested case defined — applicability of Montana Administrative Procedure Act, 2-4-102.

50-6-311. Return of license for destruction or deletion. On cancellation of a license, the license certificate shall be returned to the department for destruction or deletion as the department may direct in its notice of cancellation.

History: En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(3).

50-6-312. Repealed. Sec. 17, Ch. 387, L. 1989.

History: En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(part).

50-6-313. Inspections. (1) The department shall make necessary investigations and inspections for enforcement of this part.

(2) The department shall make regular inspections as the rules of the department may direct and special inspections which it considers necessary.

(3) The department has free access at all reasonable hours to the place of business of any person operating an emergency medical service in order to make necessary inspections. These inspections may include the inspection of any equipment or records pertaining to the activities of the emergency medical service.

(4) A person may not refuse entry or access to an authorized representative of the department who presents appropriate credentials and requests entry for the purpose of conducting an inspection necessitated under this section. A person may not obstruct, hamper, or interfere with an inspection that is properly conducted pursuant to this section.

(5) Upon request, the owner or operator of an emergency medical service must receive a report stating all facts that relate to his compliance with the provisions of this part as determined by the department, based upon its inspection.

History: En. Sec. 7, Ch. 387, L. 1971; amd. Sec. 13, Ch. 349, L. 1974; R.C.M. 1947, 69-3610; amd. Sec. 9, Ch. 387, L. 1989.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

Injunctions, Title 27, ch. 19.

50-6-314. Authority of department to compel and take testimony. In any proceeding under this part, the department may administer oaths, issue subpoenas, summon witnesses, and take testimony of any person within the state.

History: En. Sec. 8, Ch. 387, L. 1971; R.C.M. 1947, 69-3611; amd. Sec. 13, Ch. 387, L. 1989; amd. Sec. 268, Ch. 546, L. 1995.

Cross-References

Subpoenas and enforcement — compelling testimony, 2-4-104.

50-6-315. County attorney to prosecute violations. When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person violating this part or any rule of the department or order issued by the department.

History: En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(4); amd. Sec. 14, Ch. 387, L. 1989; amd. Sec. 269, Ch. 546, L. 1995.

Cross-References

Duties of County Attorney relating to state matters, 7-4-2716.

50-6-316. Criminal and civil penalties. (1) Any person violating any provision of this part or any rule of the department or order issued by the department is guilty of a misdemeanor and upon conviction shall be fined not less than $50 or more than $100 for the first offense, not less than $75 or more than $200 for the second offense, and for third and subsequent offenses, not less than $200 or more than $500 or imprisoned in the county jail not to exceed 90 days.

(2) A person who violates any provision of this part or any rule of the department or order issued by the department is subject to a civil penalty not

to exceed $1,000 for each violation. Each day of violation constitutes a separate violation.

(3) An action commenced under subsections (2) through (6) does not bar administrative enforcement of this part as provided in 50-6-327 or an injunction as provided in 50-6-326.

(4) If the department has reason to believe that a person has violated any provision of this part or any rule of the department or order issued by the department, it shall bring an action in the name of the state against the person to impose, assess, and recover the civil penalties as provided in subsection (2).

(5) Any civil penalty collected under subsections (2) through (6) is in lieu of the criminal penalty provided for in subsection (1).

(6) All penalties collected under subsections (2) through (5) must be transmitted to the state treasurer for deposit in the state general fund.

History: En. Sec. 9, Ch. 387, L. 1971; R.C.M. 1947, 69-3612; amd. Sec. 15, Ch. 387, L. 1989; (2) thru (6)En. Sec. 16, Ch. 387, L. 1989; amd. Sec. 270, Ch. 546, L. 1995.

50-6-317. Liability protection. (1) A physician or registered nurse licensed under the laws of this state who gives instructions for medical care to a member of an emergency medical service without compensation or for compensation not exceeding $5,000 in any 12-month period and whose professional practice is not primarily in an emergency or trauma room or ward is not liable for civil damages for an injury resulting from the instructions, except damages for an injury resulting from the gross negligence of the physician or nurse, if the instructions given by the physician or nurse are:

(a) consistent with the protocols and the medical control plan approved by the department in licensing the emergency medical service; and

(b) consistent with the level of certification or licensure of the emergency medical services personnel instructed by the physician or nurse.

(2) An offline medical director is not liable for civil damages for an injury resulting from the performance of his duties, except damages for an injury resulting from the gross negligence of the director.

History: En. Sec. 2, Ch. 304, L. 1991.

Cross-References

Licensing of physicians, Title 37, ch. 3, part 3.

Licensing of nurses, Title 37, ch. 8, part 4.

50-6-318 through 50-6-322 reserved.

50-6-323. Powers and duties of department. (1) The department has general authority to supervise and regulate emergency medical services in Montana.

(2) The department shall receive and investigate complaints relating to the operation of any emergency medical service, including complaints concerning:

(a) patient care provided by an emergency medical service;

(b) the condition of any vehicle or aircraft used as an ambulance; or

(c) individual performance by an emergency medical service provider.

(3) Upon completion of an investigation as provided in subsection (2), the department shall take appropriate action, including the institution of necessary legal proceedings, as authorized under this part.

(4) In order to carry out the provisions of this part, the department shall prescribe and enforce rules for emergency medical services. Rules of the department may include but are not limited to the following:

(a) the classification and identification of specific types and levels of prehospital and interhospital medical transportation or treatment services;

(b) procedures for issuing, denying, renewing, and canceling licenses;

(c) minimum licensing standards for each type and level of service, including requirements for personnel, medical control, maintenance, equipment, reporting, recordkeeping, sanitation, and minimum insurance coverage as determined appropriate by the department; and

(d) other requirements necessary and appropriate to assure the quality, safety, and proper operation and administration of emergency medical services.

(5) A rule under this section is not effective until:

(a) a public hearing has been held for review of the rule; and

(b) notice of the public hearing and a copy of the proposed rules have been sent to all persons licensed under 50-6-306 to conduct or operate an emergency medical service. Notice must be sent at least 30 days prior to the date of the public hearing.

History: En. Sec. 3, Ch. 387, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4., part 3.

50-6-324. Advisory committee. (1) The department may establish an advisory committee to assist in making determinations regarding:

(a) a request for waiver of licensing requirements as provided in 50-6-325;

(b) the resolution of a complaint as described in 50-6-323; and

(c) issuance of an order authorized under this part.

(2) The advisory committee must be established pursuant to rules adopted by the department.

History: En. Sec. 12, Ch. 387, L. 1989; amd. Sec. 271, Ch. 546, L. 1995.

50-6-325. Waiver of licensing requirements. (1) The department may waive any licensing requirements under this part upon submission and approval of a written application for waiver by a person subject to licensing under this part.

(2) The department may waive a licensing requirement if the person provides sufficient justification to allow a finding by the department that:

(a) the waiver is necessary to avoid significant financial or other hardship; and

(b) granting the waiver would not jeopardize patient care or the public health and safety.

(3) A waiver must be issued on a temporary basis, not exceeding 6 months, and may be renewed by the department upon submission and approval of an additional application for waiver of licensing requirements.

(4) A waiver granted by the department may be revoked for good cause after notice and an opportunity for a hearing before the department have been provided to the person affected by the department's action.

History: En. Sec. 8, Ch. 387, L. 1989; amd. Sec. 272, Ch. 546, L. 1995.

50-6-326. Injunction to require compliance. (1) The department may seek an injunction from an appropriate district court to require compliance with this part or to require compliance with a rule of the department or an order issued by the department. The court to which the department applies for an injunction may issue a temporary restraining order if there is reasonable cause to believe that the allegations of the department are true.

(2) An action for injunctive relief initiated by the department pursuant to subsection (1) may be commenced in the district court of the county in which the defendant is located, resides, or is doing business. If the defendant cannot be located in Montana, the action may be commenced in the county where the violation is alleged to occur or have occurred, and the court has jurisdiction to restrain the violation and require compliance.

History: En. Sec. 10, Ch. 387, L. 1989; amd. Sec. 273, Ch. 546, L. 1995.

Cross-References

Injunctions, Title 27, ch. 19.

50-6-327. Administrative enforcement. (1) If the department believes that there is a violation of this part or a violation of a rule of the department, it may serve notice of the violation upon the alleged violator or the alleged violator's agent. Service of notice must be by certified mail and is complete on the date of mailing.

(2) Notice required under subsection (1) must:

(a) specify the provision of this part or the rule alleged to be violated;

(b) contain a statement of the facts alleged to constitute a violation; and

(c) include an order that the alleged violator take necessary corrective action within a reasonable period of time as stated in the order. The order may include corrective action, such as decertification of a specific vehicle or aircraft from use as an ambulance or restriction on the use of a specific individual or type of or level of service in providing emergency medical service.

(3) An order issued pursuant to subsection (2) becomes final unless the person named in the order requests a hearing before the department. The request for a hearing must be made in writing to the department at least 30 days after the date of service of notice of an alleged violation. On receipt of the request, the department shall schedule a date for a hearing.

(4) If, after a hearing, the department finds that a violation has occurred, it shall either affirm or modify the corrective action order. An order issued by the department after hearing may prescribe the date by which the violation must cease and may prescribe time limits for corrective action. If, after a hearing, the department finds a violation has not occurred, it shall rescind the corrective action order.

History: En. Sec. 11, Ch. 387, L. 1989; amd. Sec. 274, Ch. 546, L. 1995.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

Part 4

State Trauma Care System

50-6-401. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22.

(2) "Emergency medical service" means an emergency medical service as defined by 50-6-302.

(3) "Health care facility" or "facility" means a hospital or medical assistance facility as defined in 50-5-101.

(4) "Hospital trauma register" means patient-specific trauma data that is maintained by a health care facility, in a format prescribed by department rule, and that has the primary purpose of facilitating peer review and quality improvement at the health care facility.

(5) "Quality improvement" means the process of defining trauma care system performance standards, collecting data against which the standards may be applied, using the data to determine compliance with the standards, and using the data and compliance information in a nonpunitive manner, including peer review, that will continuously improve performance and facilitate compliance with the standards.

(6) "State trauma register" means trauma data relating to a specific patient or health care facility that is maintained by the department in an electronic format and that has the primary purpose of facilitating peer review and quality improvement for a health care facility or a trauma care system.

(7) "Trauma" means a severe, abrupt injury to the human body that is caused by mechanical, environmental, thermal, or other physical force.

(8) "Trauma care committee" means the trauma care committee created in 2-15-2216.

(9) "Trauma care system" means a state or regional system for the prevention of trauma and the provision of optimal medical care to trauma victims that includes both provision of appropriate health care services and provision of emergency medical care, equipment, and personnel for effective and coordinated prehospital, hospital, interhospital, and rehabilitative care for trauma patients.

(10) "Trauma facility" means a health care facility designated by the department pursuant to 50-6-410 as providing a specialized program in trauma care with appropriately trained personnel, equipment, and other facility resources that are specifically organized to provide optimal care to a trauma patient at the facility.

(11) "Trauma region" means a geographic area, designated by department rule pursuant to 50-6-402, within which trauma services are coordinated and evaluated through a regional trauma care system.

History: En. Sec. 3, Ch. 579, L. 1995; amd. Sec. 4, Ch. 171, L. 1997.

50-6-402. Department duties — rules. (1) The department shall plan, coordinate, implement, and administer a statewide trauma care system that involves all health care facilities and emergency medical services within the state. The department shall also develop and adopt a statewide trauma care system plan and a state trauma register.

(2) The department shall adopt rules to:

(a) establish and coordinate the statewide trauma care system, including rules that establish:

(i) various levels of trauma facilities and the standards each facility is required to meet concerning personnel, equipment, resources, data collection, and organizational capabilities;

(ii) procedures for, standards for, and the duration of designation and revocation of designation of a trauma facility, including application procedures, site survey procedures, complaint investigation, and emergency suspension of designation;

(iii) operational procedures and criteria for the regional trauma advisory committees;

(iv) prehospital emergency medical services triage and treatment protocols for trauma patients;

(v) triage and treatment protocols for the transfer of injured persons between health care facilities;

(vi) requirements for collection and release of trauma register data;

(vii) quality improvement standards for emergency medical services and trauma care facilities; and

(viii) the duties, responsibilities, and functions of the trauma care committee created by 2-15-2216 and the regional trauma care advisory committees created pursuant to 50-6-411;

(b) designate trauma regions throughout Montana, taking into consideration geographic distance from available trauma care, transportation modalities available, population location and density, health care facility resources, historical patterns of patient referral, and other considerations relevant to optimum provision of emergency medical care;

(c) establish the procedure to be followed by a health care facility to appeal to the department a decision by the department pursuant to 50-6-410 affecting the facility's designation as a trauma facility;

(d) specify the information that must be submitted to the department, including information from health care facilities, for statistical evaluation of the state and regional trauma care systems, planning prevention programs, assessing trauma-related educational priorities, and determining how trauma facilities and emergency medical services may comply with protocols and standards adopted by the department; and

(e) establish the electronic format and other standards that a health care facility trauma data system is required to meet in order to qualify as a hospital trauma register.

(3) The department shall submit a report to each session of the legislature concerning the effectiveness of the trauma care system established under this part.

(4) This part does not restrict any other provisions of law allowing or requiring a health care facility or health care provider to provide health care services.

History: En. Sec. 4, Ch. 579, L. 1995; amd. Sec. 5, Ch. 171, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Health care information, Title 50, ch. 16.

50-6-403. Repealed. Sec. 16, Ch. 171, L. 1997.

History: En. Sec. 5, Ch. 579, L. 1995.

50-6-404. Duties of trauma care committee. The trauma care committee provided for in 2-15-2216 shall:

(1) provide recommendations and guidance to the department concerning:

(a) trauma care, including suggestions for changes to the statewide trauma care system;

(b) the implementation of a hospital data collection system; and

(c) the design and implementation of a statewide and regional quality improvement system for trauma care that considers the standards recommended by the American college of surgeons and the joint commission on accreditation of healthcare organizations;

(2) assist the department in conducting statewide quality improvement and peer review functions by regularly analyzing the effect of the statewide trauma care system on patient care, morbidity, and mortality; and

(3) provide recommendations to and oversight and coordination of the activities of the regional trauma care advisory committees.

History: En. Sec. 6, Ch. 579, L. 1995; amd. Sec. 6, Ch. 171, L. 1997.

50-6-405 through 50-6-409 reserved.

50-6-410. Department designation of trauma facility — revocation of designation — appeal. (1) In order to be designated as a trauma facility, a health care facility shall submit to the department an application, on a form specified by the department, that provides the information required by department rule.

(2) Upon receipt of a completed application for designation as a trauma facility, the department shall review the application for compliance with standards adopted by the department for designation of trauma care facilities. If the facility meets the standards adopted by the department, the department shall designate the facility as a trauma care facility, specifying the level of trauma care determined by the department to be appropriate for the facility.

(3) The department may revoke a designation as a trauma care facility if the facility no longer meets the requirements for designation or otherwise violates a department standard required to maintain designation.

(4) The department shall notify the applicant in writing of the department's decision to approve, deny, or revoke a health care facility's designation as a trauma facility.

(5) A health care facility that submitted an application pursuant to subsection (1) may appeal a department decision refusing to designate the facility, a decision designating the facility for a different level of trauma care than requested by the facility, or a decision to revoke a designation as a trauma facility. In order to appeal the decision, the health care facility shall submit a written request for a hearing to the department within 30 days after the facility receives notice of the department's decision. The hearing on the appeal must be conducted pursuant to 2-4-604.

(6) Unless the appellant agrees to an extension of time, the department shall, within 30 days of its decision in an appeal pursuant to subsection (5), serve the appellant with written findings and conclusions that form the basis for the department's decision.

History: En. Sec. 7, Ch. 579, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-6-411. Regional trauma care advisory committees. (1) Each trauma facility designated by the department pursuant to 50-6-410 shall appoint one representative to a regional trauma care advisory committee for the region in which the facility is located.

(2) Members of a regional trauma care advisory committee serve 4-year terms, except that one-half of the members initially appointed shall, as determined by lot, serve 2-year terms. If a vacancy occurs, the appointing authority shall appoint a replacement to fill the unexpired term. Members may be reappointed and may be removed for cause by the appointing authority.

(3) Members of a regional trauma care advisory committee shall elect a presiding officer who shall serve a term of 2 years.

(4) Members of a regional trauma care advisory committee do not receive compensation from the state and may not be reimbursed by the state for their expenses.

(5) Regional trauma care advisory committees have the duties provided in 50-6-412.

History: En. Sec. 8, Ch. 579, L. 1995.

50-6-412. Duties of regional trauma care advisory committees. A regional trauma care advisory committee shall:

(1) establish standards, policies, procedures, and protocols for the regional trauma care system;

(2) conduct regional trauma care quality improvement, including receipt of reports prepared by the department containing trauma care data and making recommendations to trauma care facilities within the region based upon those reports;

(3) advise the trauma care committee concerning the statewide trauma care system;

(4) establish trauma education and injury prevention programs;

(5) provide advice concerning trauma care to health care facilities and other providers of health care;

(6) perform other duties required by department rule; and

(7) conduct other activities needed to ensure optimal delivery of trauma care services within the region.

History: En. Sec. 9, Ch. 579, L. 1995.

50-6-413 and 50-6-414 reserved.

50-6-415. Confidentiality. (1) Data in a health care facility's hospital trauma register and reports developed from that data pertaining to quality of trauma care may be given by the facility only to:

(a) the facility's peer review committee;

(b) the regional trauma care advisory committee of the region in which the facility is located;

(c) the trauma care committee; or

(d) the department.

(2) Data in the state trauma register and hospital trauma registers is not subject to discovery in a civil action and may not be introduced into evidence in a judicial or administrative proceeding.

(3) Data and reports concerning peer review, quality improvement, or the quality of the trauma care provided by a health care facility or a health care provider that are produced by a regional trauma care advisory committee or the trauma care committee or provided by a health care facility to a regional trauma care advisory committee or the trauma care committee, as well as the proceedings of those committees concerning peer review and quality improvement, are not subject to discovery in a civil action and may not be introduced into evidence in a judicial or administrative proceeding.

(4) A statistical report on trauma and trauma care developed by the department that does not identify specific health care facilities, health care providers, or patients is not confidential and is considered public information.

(5) A statistical report developed by a health care facility from information in its hospital trauma register that does not pertain to peer review or quality improvement is not confidential and is considered public information.

(6) Information in a department record or report that is used to evaluate and improve the quality of emergency medical service and trauma care by a health care facility or emergency medical service is not subject to discovery and may not be introduced in evidence in a judicial or administrative proceeding.

(7) Information in a department record or report that is used to determine whether a health care facility will be designated or lose its designation as a trauma care facility is not confidential and is considered public information.

(8) A standard or protocol adopted by the department pursuant to this part may not be used to demonstrate negligence or lack of negligence by a health care provider or health care facility to whom the standard or protocol applies.

History: En. Sec. 10, Ch. 579, L. 1995.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Health care information, Title 50, ch. 16.

Part 5

Automated External Defibrillator Programs

50-6-501. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Automated external defibrillator" or "AED" means a medical device that:

(a) has received approval for marketing from the U.S. food and drug administration;

(b) is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia and of determining, without intervention by an operator, whether defibrillation should be performed;

(c) upon determining that defibrillation should be performed, automatically charges and indicates that it is ready to deliver an electrical impulse to an individual's heart; and

(d) may be used by an operator of the device to deliver an electrical impulse to an individual's heart.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Emergency medical service" means an emergency medical service as defined by 50-6-302.

(4) "Entity" means a public agency, department, office, board, or commission or other governmental organization or a private corporation, partnership, group, or business or other private organization.

(5) "Physician" means an individual licensed to practice medicine pursuant to Title 37, chapter 3, part 3.

(6) "Public safety answering point" means a communications facility operated on a 24-hour basis that first receives 9-1-1 calls from persons in a 9-1-1 service area and that may, as appropriate, directly dispatch public or private safety services or transfer or relay 9-1-1 calls to appropriate public safety agencies.

History: En. Sec. 2, Ch. 335, L. 1999.

Compiler's Comments

Effective Date: Section 9(2), Ch. 335, L. 1999, provided that this section is effective July 1, 1999.

50-6-502. AED program — requirements for AED use. In order for an entity to use or allow the use of an automated external defibrillator, the entity shall:

(1) establish a program for the use of an AED that includes a written plan that complies with this part and rules adopted by the department pursuant to 50-6-503. The plan must specify:

(a) where the AED will be placed;

(b) the individuals who are authorized to operate the AED;

(c) how AED use will be coordinated with an emergency medical service providing services in the area where the AED is located;

(d) the medical supervision that will be provided;

(e) the maintenance that will be performed on the AED;

(f) records that will be kept by the program;

(g) reports that will be made of AED use;

(h) the name, location, and telephone number of a physician, or other individual designated by the physician, designated to provide medical supervision of the AED program; and

(i) other matters as specified by the department;

(2) adhere to the written plan required by subsection (1);

(3) ensure that before using the AED, an individual authorized to operate the AED receives appropriate training approved by the department in cardiopulmonary resuscitation and the proper use of an AED;

(4) maintain, test, and operate the AED according to the manufacturer's guidelines and maintain written records of all maintenance and testing performed on the AED;

(5) ensure that the physician or other individual designated by the physician to supervise the AED program supervises the AED program to ensure compliance with the written plan, this part, and rules adopted by the department pursuant to 50-6-503 and reviews each case in which the AED is used;

(6) each time an AED is used for an individual in cardiac arrest, require that an emergency medical service is summoned to provide assistance as soon as possible and that the AED use is reported to the supervising physician or the person designated by the physician and to the department as required by the written plan;

(7) before allowing any use of an AED, provide the following to all licensed emergency medical services and any public safety answering point or emergency dispatch center providing services to the area where the AED is located:

(a) a copy of the plan prepared pursuant to this section; and

(b) written notice, in a format prescribed by department rules, stating:

(i) that an AED program is established by the entity;

(ii) where the AED is located; and

(iii) how the use of the AED is to be coordinated with the local emergency medical service system; and

(8) comply with this part and rules adopted by the department pursuant to 50-6-503.

History: En. Sec. 3, Ch. 335, L. 1999.

Compiler's Comments

Effective Date: Section 9(2), Ch. 335, L. 1999, provided that this section is effective July 1, 1999.

50-6-503. Rulemaking. (1) The department shall adopt rules specifying the following:

(a) the contents of the written notice required by 50-6-502(7);

(b) reporting requirements for each use of an AED;

(c) the contents of a plan prepared in accordance with 50-6-502 and requirements applicable to the subject matter of the plan;

(d) training requirements in cardiopulmonary resuscitation and AED use for any individual authorized by an AED program plan to use an AED;

(e) requirements for medical supervision of an AED program;

(f) minimum requirements for a medical protocol for use of an AED;

(g) performance requirements for an AED in order for the AED to be used in an AED program; and

(h) a list of the AED training programs approved by the department.

(2) The department may not adopt rules for any purpose other than those in subsection (1).

History: En. Sec. 4, Ch. 335, L. 1999.

Compiler's Comments

Effective Date: Section 9(1), Ch. 335, L. 1999, provided that this section is effective on passage and approval. Approved April 19, 1999.

50-6-504. Enforcement — cessation order — hearing — injunction. (1) If the department receives information that an AED is being used in violation of this part or a rule adopted by the department pursuant to 50-6-503, it may send a written order to the entity responsible for use of the AED, as specified in the plan prepared pursuant to 50-6-502, ordering the entity to cease the violation immediately. The order is effective upon receipt by the entity, and the entity shall comply with the terms of the order. If the department receives information that the violation has been corrected, the department may rescind its order by sending a notice to that effect to the entity. The rescission is effective upon its receipt by the entity.

(2) The entity may request a hearing to contest an order issued by the department pursuant to subsection (1) by submitting a written request to the department within 30 days after receipt of the order. A request for a hearing does not stay the enforceability of the department's order. The hearing must be held within 30 days after the department receives the request, unless the hearings officer sets a later date for good cause. The hearing must be held pursuant to the contested case provisions of the Montana Administrative Procedure Act.

(3) Either the county attorney for the county in which the violation occurred or the department may bring an action in the district court of the county where the violation occurred or in the district court for Lewis and Clark County to enforce the department's order or to directly enjoin a violation of this part or a rule adopted pursuant to 50-6-503.

History: En. Sec. 5, Ch. 335, L. 1999.

Compiler's Comments

Effective Date: Section 9(2), Ch. 335, L. 1999, provided that this section is effective July 1, 1999.

50-6-505. Liability limitations. (1) An individual who provides emergency care or treatment by using an AED in compliance with this part and rules adopted by the department pursuant to 50-6-503 and an individual providing cardiopulmonary resuscitation to an individual upon whom an AED is or may be used are immune from civil liability for a personal injury that results from that care or treatment or from civil liability as a result of any act or failure to act in providing or arranging further medical treatment for the individual upon whom the AED was used unless the individual using the AED or the person providing cardiopulmonary resuscitation, as applicable, acts with gross negligence or with willful or with wanton disregard for the care of the person upon whom the AED is or may be used.

(2) The following individuals or entities are immune from civil liability for any personal injury that results from an act or omission that does not amount to willful or wanton misconduct or gross negligence if applicable provisions of this part and rules adopted by the department pursuant to 50-6-503 have been met by the individual or entity:

(a) the physician supervising the AED program or the person designated by a physician to supervise the program, either of whom are designated in the plan prepared pursuant to 50-6-502;

(b) the entity responsible for the AED program, as designated in the plan prepared pursuant to 50-6-502;

(c) an individual providing training to others on the use of an AED.

History: En. Sec. 6, Ch. 335, L. 1999.

Compiler's Comments

Effective Date: Section 9(2), Ch. 335, L. 1999, provided that this section is effective July 1, 1999.

50-6-506. Exemptions. This part does not apply to the use of an AED by:

(1) a patient or the patient's caretaker if use of the AED is ordered by a physician; or

(2) a licensed health care professional, including an emergency medical technician, whose scope of practice includes the use of an AED.

History: En. Sec. 7, Ch. 335, L. 1999.

Compiler's Comments

Effective Date: Section 9(2), Ch. 335, L. 1999, provided that this section is effective July 1, 1999.

CHAPTER 7

HOME HEALTH AGENCIES (Repealed. Sec. 27, Ch. 347, L. 1979)

Chapter Compiler's Comments

Histories of Repealed Sections: **50-7-101 through 50-7-309.** En. Secs. 1 thru 10, Ch. 383, L. 1977; R.C.M. 1947, 69-7301 thru 69-7310.

CHAPTER 8

ONE-STEP FACILITY LICENSING

Part 1 — General

50-8-101. Definitions.
50-8-102. One-step licensing required.
50-8-103 and 50-8-104 reserved.
50-8-105. Inspections by employees of other department.

Part 1
General

50-8-101. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Facility" means:

(a) nonmedical facilities including:

(i) mental health transitional living facilities; and

(ii) inpatient freestanding or intermediate transitional living facilities for alcohol or drug treatment or emergency detoxification;

(b) community homes for persons with developmental disabilities, community homes for physically disabled persons, and adult foster family care homes;

(c) youth care facilities;

(d) public accommodations, including roominghouses, retirement homes, hotels, and motels;

(e) health care facilities or services, including hospitals, skilled and intermediate nursing home services, and intermediate care nursing home services for the mentally retarded;

(f) freestanding medical facilities or care, including infirmaries, kidney treatment centers, and home health agencies; and

(g) personal care facilities.

(3) "Inspecting authority" means the department or agency authorized by statute to perform a given inspection necessary for certification for licensure.

(4) "Licensing agency" means the agency that is authorized by statute to issue the license.

History: En. Sec. 1, Ch. 356, L. 1983; amd. Sec. 66, Ch. 609, L. 1987; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 101, Ch. 418, L. 1995; amd. Sec. 275, Ch. 546, L. 1995.

50-8-102. One-step licensing required. The department shall provide one-step licensing of all facilities under its jurisdiction. One-step licensing is at a minimum the provision of a designated office within the department or, by agreement between departments, in another department, responsible for issuing facility licenses. The one-step licensing office shall facilitate intradepartmental certifications for licensure. When practicable, one-step licensure also includes:

(1) the coordination of all governmental licensing functions, state and local, required for the licensure of a facility for a program or a service and for health and safety standards. The coordination must include at a minimum the names, addresses, and functions of all governmental authorities enforcing such standards and may include the requirement that the responsible office be a clearinghouse for all forms and applications for other agencies and for assuming the responsibility for insuring timely inspections, reviews, and application processing by other agencies.

(2) the use of departmental employees to inspect specified types of facilities for particular health and safety standards as provided in 50-8-105.

History: En. Sec. 2, Ch. 356, L. 1983; amd. Sec. 276, Ch. 546, L. 1995.

Cross-References

Discrimination in licensing prohibited, 49-3-204.

50-8-103 and 50-8-104 reserved.

50-8-105. Inspections by employees of other department. (1) Each department may, by joint rule with a state agency or by interlocal agreement with other governmental entities, authorize departmental employees to perform specific health and safety inspections for certain classes of facilities under the jurisdiction of another department or agency. Such inspections may be limited by type of facility, scope of inspection, and type of inspection, such as original application, renewal application, routine or unannounced inspection, or other identifiable inspection situations.

(2) The inspecting authority, prior to authorizing employees of another department or agency to make an inspection, may require minimal standards of knowledge or training relevant to the type of inspection to be conducted. The inspecting authority may require periodic reexamination of such employees for necessary knowledge and ability.

(3) The inspecting authority delegates authority to the employees of another department or agency and is responsible for the quality of the inspections. The inspecting authority shall perform an inspection delegated to

such an employee if the other department or agency or the head of the facility believes that the inspection situation is unique or that the employee is in error. The result of an inspection by the inspecting authority takes precedence over an inspection by an employee of another department or agency.

History: En. Sec. 3, Ch. 356, L. 1983.

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

CHAPTER 9

RIGHTS OF THE TERMINALLY ILL ACT

Part 1 — General

50-9-101. Short title.
50-9-102. Definitions.
50-9-103. Declaration relating to use of life-sustaining treatment — designee.
50-9-104. Revocation of declaration.
50-9-105. When declaration operative.
50-9-106. Consent by others to withholding or withdrawal of treatment.
50-9-107. When health care provider may presume validity of declaration.
50-9-108. Effect of previous declaration.
50-9-109 reserved.
50-9-110. Authority to adopt rules.
50-9-111. Recognition of declarations executed in other states.

Part 2 — Effect on Health Care—Rights and Duties

50-9-201. Recording determination of terminal condition and content of declaration.
50-9-202. Treatment of qualified patients.
50-9-203. Transfer of patients.
50-9-204. Immunities.
50-9-205. Effect on insurance — patient's decision.
50-9-206. Penalties.

Part 1
General

Part Cross-References

Do Not resuscitate — notification, Title 50, ch. 10.

HIV testing required, 50-16-1008.

Determination of death, 50-22-101.

UPC — persons under disability — guardianship and conservatorship, Title 72, ch. 5.

Uniform Anatomical Gift Act, Title 72, ch. 17.

50-9-101. Short title. This chapter may be cited as the "Montana Rights of the Terminally Ill Act".

History: En. Sec. 1, Ch. 369, L. 1985; amd. Sec. 1, Ch. 391, L. 1991.

50-9-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Attending physician" means the physician selected by or assigned to the patient, who has primary responsibility for the treatment and care of the patient.

(2) "Board" means the Montana state board of medical examiners.

(3) "Declaration" means a document executed in accordance with the requirements of 50-9-103.

(4) "Department" means the department of public health and human services provided for in 2-15-2201.

(5) "Emergency medical services personnel" means paid or volunteer firefighters, law enforcement officers, first responders, emergency medical technicians, or other emergency services personnel acting within the ordinary course of their professions.

(6) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to administer health care in the ordinary course of business or practice of a profession.

(7) "Life-sustaining treatment" means any medical procedure or intervention that, when administered to a qualified patient, serves only to prolong the dying process.

(8) "Living will protocol" means a locally developed, community-wide method or a standardized, statewide method developed by the department and approved by the board, of providing palliative care to and withholding life-sustaining treatment from a qualified patient under 50-9-202 by emergency medical service personnel.

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(10) "Physician" means an individual licensed under Title 37, chapter 3, to practice medicine in this state.

(11) "Qualified patient" means a patient 18 years of age or older who has executed a declaration in accordance with this chapter and who has been determined by the attending physician to be in a terminal condition.

(12) "Reliable documentation" means a standardized, statewide identification card or form or a necklace or bracelet of uniform design, adopted by a written, formal understanding of the local community emergency medical services agencies and licensed hospice and home health agencies, that signifies and certifies that a valid and current declaration is on file and that the individual is a qualified patient.

(13) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(14) "Terminal condition" means an incurable or irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of the attending physician, result in death within a relatively short time.

History: En. Sec. 2, Ch. 369, L. 1985; amd. Sec. 1, Ch. 475, L. 1989; amd. Sec. 2, Ch. 391, L. 1991; amd. Sec. 102, Ch. 418, L. 1995; amd. Sec. 277, Ch. 546, L. 1995.

50-9-103. Declaration relating to use of life-sustaining treatment — designee. (1) An individual of sound mind and 18 or more years of age may execute at any time a declaration governing the withholding or withdrawal of life-sustaining treatment. The declarant may designate another individual of sound mind and 18 or more years of age to make decisions governing the withholding or withdrawal of life-sustaining treatment. The declaration must be signed by the declarant, or another at the declarant's direction, and witnessed by two individuals. A physician or health care provider may presume, in the absence of actual notice to the contrary, that the declaration complies with this chapter and is valid.

(2) A declaration directing a physician to withhold or withdraw life-sustaining treatment may, but need not, be in the following form:

DECLARATION

If I should have an incurable or irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician, cause my death within a relatively short time and I am no longer able to make decisions regarding my medical treatment, I direct my attending physician, pursuant to the Montana Rights of the Terminally Ill Act, to withhold or withdraw treatment that only prolongs the process of dying and is not necessary to my comfort or to alleviate pain.

Signed this .... day of ...., ...
Signature ....
City, County, and State of Residence...

The declarant voluntarily signed this document in my presence.

Witness..
Address..
Witness..
Address..

(3) A declaration that designates another individual to make decisions governing the withholding or withdrawal of life-sustaining treatment may, but need not, be in the following form:

DECLARATION

If I should have an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician, cause my death within a relatively short time and I am no longer able to make decisions regarding my medical treatment, I appoint .... or, if he or she is not reasonably available or is unwilling to serve, ..., to make decisions on my behalf regarding withholding or withdrawal of treatment that only prolongs the process of dying and is not necessary for my comfort or to alleviate pain, pursuant to the Montana Rights of the Terminally Ill Act.

If the individual I have appointed is not reasonably available or is unwilling to serve, I direct my attending physician, pursuant to the Montana Rights of the Terminally Ill Act, to withhold or withdraw treatment that only prolongs the process of dying and is not necessary for my comfort or to alleviate pain.

Signed this .... day of ...., ...
Signature ....
City, County, and State of Residence...

The declarant voluntarily signed this document in my presence.

Address..
Witness..
Address..

Name and address of designee.

Name ....
Address ....

(4) If the designation of an attorney-in-fact pursuant to 72-5-501 and 72-5-502, or the judicial appointment of an individual, contains written authorization to make decisions regarding the withholding or withdrawal of life-sustaining treatment, that designation or appointment constitutes, for the purposes of this part, a declaration designating another individual to act for the declarant pursuant to subsection (1).

(5) A physician or other health care provider who is furnished a copy of the declaration shall make it a part of the declarant's medical record and, if unwilling to comply with the declaration, promptly so advise the declarant and any individual designated to act for the declarant.

History: En. Sec. 3, Ch. 369, L. 1985; amd. Sec. 3, Ch. 391, L. 1991.

Cross-References

Persons under disability — guardianship and conservatorship, Title 72, ch. 5.

Statutory form of power of attorney, 72-31-201.

50-9-104. Revocation of declaration. (1) A declarant may revoke a declaration at any time and in any manner, without regard to mental or physical condition. A revocation is effective upon its communication to the attending physician or other health care provider by the declarant or a witness to the revocation. A health care provider or emergency medical services personnel witnessing a revocation shall act upon the revocation and shall communicate the revocation to the attending physician at the earliest opportunity. A revocation communicated to a person other than the attending physician, emergency medical services personnel, or a health care provider is not effective unless the attending physician is informed of it before the qualified patient is in need of life-sustaining treatment.

(2) The attending physician or other health care provider shall make the revocation a part of the declarant's medical record.

History: En. Sec. 4, Ch. 369, L. 1985; amd. Sec. 2, Ch. 475, L. 1989; amd. Sec. 4, Ch. 391, L. 1991.

50-9-105. When declaration operative. (1) A declaration becomes operative when:

(a) it is communicated to the attending physician; and

(b) the declarant is determined by the attending physician to be in a terminal condition and no longer able to make decisions regarding administration of life-sustaining treatment.

(2) When the declaration becomes operative, the attending physician and other health care providers shall act in accordance with its provisions and with the instructions of a designee under 50-9-103(1) or comply with the transfer requirements of 50-9-203.

History: En. Sec. 11, Ch. 391, L. 1991.

50-9-106. Consent by others to withholding or withdrawal of treatment. (1) If a written consent to the withholding or withdrawal of the treatment, witnessed by two individuals, is given to the attending physician, the attending physician may withhold or withdraw life-sustaining treatment from an individual who:

(a) has been determined by the attending physician to be in a terminal condition and no longer able to make decisions regarding administration of life-sustaining treatment; and

(b) has no effective declaration.

(2) The authority to consent or to withhold consent under subsection (1) may be exercised by the following individuals, in order of priority:

(a) the spouse of the individual;

(b) an adult child of the individual or, if there is more than one adult child, a majority of the adult children who are reasonably available for consultation;

(c) the parents of the individual;

(d) an adult sibling of the individual or, if there is more than one adult sibling, a majority of the adult siblings who are reasonably available for consultation; or

(e) the nearest other adult relative of the individual by blood or adoption who is reasonably available for consultation.

(3) If a class entitled to decide whether to consent is not reasonably available for consultation and competent to decide or if it declines to decide, the next class is authorized to decide. However, an equal division in a class does not authorize the next class to decide.

(4) A decision to grant or withhold consent must be made in good faith. A consent is not valid if it conflicts with the expressed intention of the individual.

(5) A decision of the attending physician acting in good faith that a consent is valid or invalid is conclusive.

(6) Life-sustaining treatment cannot be withheld or withdrawn pursuant to this section from an individual known to the attending physician to be pregnant so long as it is probable that the fetus will develop to the point of live birth with continued application of life-sustaining treatment.

History: En. Sec. 12, Ch. 391, L. 1991.

50-9-107. When health care provider may presume validity of declaration. In the absence of knowledge to the contrary, a physician or other health care provider may assume that a declaration complies with this chapter and is valid.

History: En. Sec. 13, Ch. 391, L. 1991.

50-9-108. Effect of previous declaration. An instrument executed before October 1, 1991, that substantially complies with 50-9-103(1) is effective under this chapter.

History: En. Sec. 14, Ch. 391, L. 1991.

50-9-109 reserved.

50-9-110. Authority to adopt rules. The department may adopt rules to implement this chapter.

History: En. Sec. 4, Ch. 475, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-9-111. Recognition of declarations executed in other states. A declaration executed in a manner substantially similar to 50-9-103 in another state and in compliance with the law of that state is effective for purposes of this chapter.

History: En. Sec. 11, Ch. 369, L. 1985.

Part 2

Effect on Health Care — Rights and Duties

50-9-201. Recording determination of terminal condition and content of declaration. Upon determining that a declarant is in a terminal condition, the attending physician who knows of a declaration shall record that determination and the terms of the declaration in the declarant's medical record.

History: En. Sec. 5, Ch. 369, L. 1985; amd. Sec. 5, Ch. 391, L. 1991.

50-9-202. Treatment of qualified patients. (1) A qualified patient may make decisions regarding life-sustaining treatment so long as the patient is able to do so.

(2) This chapter does not affect the responsibility of the attending physician or other health care provider to provide treatment, including nutrition and hydration, for a patient's comfort care or alleviation of pain.

(3) Life-sustaining treatment cannot be withheld or withdrawn pursuant to a declaration from an individual known to the attending physician to be pregnant so long as it is probable that the fetus will develop to the point of live birth with continued application of life-sustaining treatment.

History: En. Sec. 6, Ch. 369, L. 1985; amd. Sec. 6, Ch. 391, L. 1991.

Cross-References

Protection of premature infants born alive, 50-20-108.

50-9-203. Transfer of patients. An attending physician or other health care provider who is unwilling to comply with this chapter shall take all reasonable steps as promptly as practicable to transfer care of the declarant to another physician or health care provider who is willing to do so. If the policies of a health care facility preclude compliance with the declaration of a qualified patient under this chapter, that facility shall take all reasonable steps to transfer the patient to a facility in which the provisions of this chapter can be carried out.

History: En. Sec. 7, Ch. 369, L. 1985; amd. Sec. 7, Ch. 391, L. 1991.

Cross-References

Right to refuse participation in sterilization, Title 50, ch. 5, part 5.

Right to refuse participation in abortion, 50-20-111.

50-9-204. Immunities. (1) In the absence of actual notice of the revocation of a declaration, the following, while acting in accordance with the requirements of this chapter, are not subject to civil or criminal liability or guilty of unprofessional conduct:

(a) a physician who causes the withholding or withdrawal of life-sustaining treatment from a qualified patient;

(b) a person who participates in the withholding or withdrawal of life-sustaining treatment under the direction or with the authorization of a physician;

(c) emergency medical services personnel who cause or participate in the withholding or withdrawal of life-sustaining treatment under the direction of or with the authorization of a physician or who on receipt of reliable documentation follow a living will protocol;

(d) emergency medical services personnel who proceed to provide life-sustaining treatment to a qualified patient pursuant to a revocation communicated to them; and

(e) a health care facility in which withholding or withdrawal occurs.

(2) A physician or other health care provider whose action under this chapter is in accord with reasonable medical standards is not subject to civil or criminal liability or discipline for unprofessional conduct with respect to that decision.

(3) A physician or other health care provider whose decision about the validity of consent under 50-9-106 is made in good faith is not subject to criminal or civil liability or discipline for unprofessional conduct with respect to that decision.

(4) An individual designated pursuant to 50-9-103(1) or an individual authorized to consent pursuant to 50-9-106, whose decision is made or consent is given in good faith pursuant to this chapter, is not subject to criminal or civil liability or discipline for unprofessional conduct with respect to that decision.

History: En. Sec. 8, Ch. 369, L. 1985; amd. Sec. 3, Ch. 475, L. 1989; amd. Sec. 8, Ch. 391, L. 1991.

Cross-References

Liability, Title 27, ch. 1, part 7.

50-9-205. Effect on insurance — patient's decision. (1) Death resulting from the withholding or withdrawal of life-sustaining treatment in accordance with this chapter does not constitute, for any purpose, a suicide or homicide.

(2) The making of a declaration pursuant to 50-9-103 does not affect the sale, procurement, or issuance of any policy of life insurance or annuity, nor does it affect, impair, or modify the terms of an existing policy of life insurance. A policy of life insurance is not legally impaired or invalidated by the withholding or withdrawal of life-sustaining treatment from an insured, notwithstanding any term of the policy to the contrary.

(3) A person may not prohibit or require the execution of a declaration as a condition for being insured for or receiving health care services.

(4) This chapter creates no presumption concerning the intention of an individual who has revoked or has not executed a declaration with respect to the use, withholding, or withdrawal of life-sustaining treatment in the event of a terminal condition.

(5) This chapter does not affect the right of a patient to make decisions regarding use of life-sustaining treatment, so long as the patient is able to do so, or impair or supersede a right or responsibility that any person has to effect the withholding or withdrawal of medical care.

(6) This chapter does not require a physician or other health care provider to take action contrary to reasonable medical standards.

(7) This chapter does not condone, authorize, or approve mercy killing or euthanasia.

History: En. Sec. 10, Ch. 369, L. 1985; amd. Sec. 9, Ch. 391, L. 1991.

50-9-206. Penalties. (1) A physician or other health care provider who willfully fails to transfer the care of a patient in accordance with 50-9-203 is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(2) A physician who willfully fails to record the determination of terminal condition or the terms of a declaration in accordance with 50-9-201 is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(3) An individual who purposely conceals, cancels, defaces, or obliterates the declaration of another without the declarant's consent or who falsifies or forges a revocation of the declaration of another is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(4) An individual who falsifies or forges the declaration of another individual or purposely conceals or withholds personal knowledge of a revocation as provided in 50-9-104 is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(5) A person who requires or prohibits the execution of a declaration as a condition for being insured for or receiving health care service is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(6) A person who coerces or fraudulently induces an individual to execute a declaration is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(7) The penalties provided in this section do not displace any sanction applicable under other law.

History: En. Sec. 9, Ch. 369, L. 1985; amd. Sec. 10, Ch. 391, L. 1991.

Cross-References

Licensing and regulation of physicians, Title 37, ch. 3.

CHAPTER 10

DO NOT RESUSCITATE — NOTIFICATION

Part 1 — General

50-10-101. Definitions.
50-10-102. Immunities.
50-10-103. Adherence to do not resuscitate protocol — transfer of patients.
50-10-104. Effect on insurance — patient's decision.
50-10-105. Rulemaking authority.
50-10-106. Penalties.
50-10-107. DNR form to be readily available.

Part 1
General

Part Cross-References

Montana Rights of the Terminally Ill Act, Title 50, ch. 9.

HIV testing required, 50-16-1008.

Uniform Anatomical Gift Act, Title 72, ch. 17.

50-10-101. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Attending physician" has the meaning provided in 50-9-102.

(2) "Board" means the state board of medical examiners.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "DNR identification" means a standardized identification card, form, necklace, or bracelet of uniform size and design, approved by the department, that signifies that the possessor is a qualified patient, as defined in 50-9-102, or that the possessor's attending physician has issued a do not resuscitate order for the possessor and has documented the grounds for the order in the possessor's medical file.

(5) "Do not resuscitate order" means a directive from a licensed physician that emergency life-sustaining procedures should not be administered to a particular person.

(6) "Do not resuscitate protocol" means a standardized method of procedure, approved by the board and adopted in the rules of the department, for the withholding of emergency life-sustaining procedures by physicians and emergency medical services personnel.

(7) "Emergency medical services personnel" has the meaning provided in 50-9-102.

(8) "Health care facility" has the meaning provided in 50-5-101 and includes a public health center as defined in 7-34-2102.

(9) "Life-sustaining procedure" means cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation.

(10) "Physician" means a person licensed under Title 37, chapter 3, to practice medicine in this state.

History: En. Sec. 1, Ch. 581, L. 1991; amd. Sec. 1, Ch. 286, L. 1993; amd. Sec. 103, Ch. 418, L. 1995; amd. Sec. 278, Ch. 546, L. 1995; amd. Sec. 12, Ch. 93, L. 1997.

50-10-102. Immunities. (1) The following are not subject to civil or criminal liability and are not guilty of unprofessional conduct upon discovery of DNR identification upon a person:

(a) a physician who causes the withholding or withdrawal of life-sustaining procedures from that person;

(b) a person who participates in the withholding or withdrawal of life-sustaining procedures under the direction or with the authorization of a physician;

(c) emergency medical services personnel who cause or participate in the withholding or withdrawal of life-sustaining procedures from that person;

(d) a health care facility in which withholding or withdrawal of life-sustaining procedures from that person occurs;

(e) physicians, persons under the direction or authorization of a physician, emergency medical services personnel, or health care facilities that provide life-sustaining procedures pursuant to an oral or written request communicated to them by a person who possesses DNR identification.

(2) The provisions of subsections (1)(a) through (1)(d) apply when a life-sustaining procedure is withheld or withdrawn in accordance with the do not resuscitate protocol.

(3) Emergency medical services personnel who follow a do not resuscitate order from a licensed physician are not subject to civil or criminal liability and are not guilty of unprofessional conduct.

History: En. Sec. 2, Ch. 581, L. 1991.

50-10-103. Adherence to do not resuscitate protocol — transfer of patients. (1) Emergency medical services personnel other than physicians shall comply with the do not resuscitate protocol when presented with either do not resuscitate identification, an oral do not resuscitate order issued directly by a physician, or a written do not resuscitate order entered on a form prescribed by the department.

(2) An attending physician or a health care facility unwilling or unable to comply with the do not resuscitate protocol shall take all reasonable steps to transfer a person possessing DNR identification to another physician or to a health care facility in which the do not resuscitate protocol will be followed.

History: En. Sec. 3, Ch. 581, L. 1991.

50-10-104. Effect on insurance — patient's decision. (1) Death resulting from the withholding or withdrawal of emergency life-sustaining procedures pursuant to the do not resuscitate protocol and in accordance with this part is not, for any purpose, a suicide or homicide.

(2) The possession of DNR identification pursuant to this part does not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor does it modify the terms of an existing policy of life insurance. A policy of life insurance is not legally impaired or invalidated in any manner by the withholding or withdrawal of emergency life-sustaining procedures from an insured person possessing DNR identification, notwithstanding any term of the policy to the contrary.

(3) A physician, health care facility, or other health care provider and a health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital plan may not require a person to possess DNR identification as a condition for being insured for or receiving health care services.

(4) This part does not create a presumption concerning the intention of an individual who does not possess DNR identification with respect to the use, withholding, or withdrawal of emergency life-sustaining procedures.

(5) This part does not increase or decrease the right of a patient to make decisions regarding the use of emergency life-sustaining procedures if the patient is able to do so, nor does this part impair or supersede any right or responsibility that a person has to effect the withholding or withdrawal of

medical care in any lawful manner. In that respect, the provisions of this part are cumulative.

(6) This part does not authorize or approve mercy killing.

History: En. Sec. 4, Ch. 581, L. 1991.

50-10-105. Rulemaking authority. (1) Upon the adoption of a do not resuscitate protocol by the board, the department may adopt a standard form of DNR identification to be used statewide.

(2) The department shall adopt rules to administer the provisions of this part.

History: En. Sec. 5, Ch. 581, L. 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-10-106. Penalties. (1) A physician who willfully fails to transfer a patient in accordance with 50-10-103 is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(2) A person who purposely conceals, cancels, defaces, or obliterates the DNR identification of another without the consent of the possessor or who falsifies or forges a revocation of the DNR identification of another is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(3) A person who falsifies or forges the DNR identification of another or purposely conceals or withholds personal knowledge of a revocation of DNR identification with the intent to cause the use, withholding, or withdrawal of life-sustaining procedures is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

History: En. Sec. 6, Ch. 581, L. 1991.

50-10-107. DNR form to be readily available. The department shall ensure that the DNR identification form approved by the department is readily available at no cost or at a nominal charge.

History: En. Sec. 2, Ch. 286, L. 1993.

CHAPTERS 11 THROUGH 14

RESERVED

CHAPTER 15

VITAL STATISTICS

Part 1 — General Provisions

50-15-101. Definitions.
50-15-102. Statewide system of vital statistics to be established.
50-15-103. Duties of department.
50-15-104. Appointment and supervision of local registrars.
50-15-105. Appointment of deputies authorized.

50-15-106. Registrars and deputies to report violations.
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50-15-108. Duty to furnish information.
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50-15-110. Repealed.
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50-15-112. Repealed.
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50-15-123. Preservation of vital records.
50-15-124. Content of certificates, records, and reports.

Part 2 — Birth

50-15-201. Repealed.
50-15-202. Unattended birth.
50-15-203. Child of unknown parentage.
50-15-204. Delayed or amended birth certificate.
50-15-205. Repealed.
50-15-206. Repealed.
50-15-207. New birth certificate upon proof of legitimation.
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50-15-211 through 50-15-220 reserved.
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Part 3 — Marriage and Adoption

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50-15-402. Copy to be forwarded to deceased's county of residence.
50-15-403. Preparation and filing of death or fetal death certificate.
50-15-404. Preparation of certificate when death not medically attended.
50-15-405. Authorization for removal of body from place of death.
50-15-406. Body brought into state for disposition.
50-15-407. Disinterment permit.
50-15-408 through 50-15-410 reserved.
50-15-411. Sudden infant death syndrome — findings — definition.
50-15-412. Cause of death — sudden infant death syndrome.

Parts 5 and 6 reserved

Part 7 — Tumor Registry

50-15-701. Short title.
50-15-702. Definitions.
50-15-703. Duty to report tumors.
50-15-704. Confidentiality.
50-15-705. Tumor registry.

50-15-706. Rules.
50-15-707 through 50-15-709 reserved.
50-15-710. Immunity from liability.

Part 1
General Provisions

50-15-101. Definitions. Unless the context requires otherwise, in parts 1 through 4, the following definitions apply:

(1) "Dead body" means a human body or parts of a human body from which it reasonably may be concluded that death occurred.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Dissolution of marriage" means a marriage terminated pursuant to Title 40, chapter 4, part 1.

(4) "Fetal death" means death of the fetus prior to the complete expulsion or extraction from its mother as a product of conception, notwithstanding the duration of pregnancy. The death is indicated by the fact that after expulsion or extraction, the fetus does not breathe or show any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are distinguished from transient cardiac contractions. Respirations are distinguished from fleeting respiratory efforts or gasps.

(5) "Final disposition" means the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or fetus.

(6) "Invalid marriage" means a marriage decreed by a district court to be invalid for the reasons contained in 40-1-402.

(7) "Live birth" means the complete expulsion or extraction from the mother as a product of conception, notwithstanding the duration of pregnancy. The birth is indicated by the fact that after expulsion or extraction, the child breathes or shows any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are distinguished from transient cardiac contractions. Respirations are distinguished from fleeting respiratory efforts or gasps.

(8) "Local registrar" means a person appointed by the department to act as its agent in administering this chapter in the area set forth in the letter of appointment.

(9) "Person in charge of disposition of a dead body" means a person who places or causes a dead body or the ashes after cremation to be placed in a grave, vault, urn, or other receptacle or otherwise disposes of the body or fetus and who is a funeral director licensed under Title 37, chapter 19, an employee acting for a funeral director, or a person who first assumes custody of a dead body or fetus.

(10) "Physician" means a person legally authorized to practice medicine in this state.

(11) "Registration" means the process by which vital records are completed, filed, and incorporated into the official records of the department.

(12) "Research" means a systematic investigation designed primarily to develop or contribute to generalizable knowledge.

(13) "System of vital statistics" means the registration, collection, preservation, amendment, and certification of vital records. The term includes the collection of reports required by this chapter and related activities, including the tabulation, analysis, publication, and dissemination of vital statistics.

(14) "Vital records" means certificates or reports of birth, death, fetal death, marriage, and dissolution of marriage and related reports.

(15) "Vital statistics" means the data derived from certificates or reports of birth, death, fetal death, induced termination of pregnancy, marriage, and dissolution of marriage and related reports.

History: En. Secs. 2, 41, Ch. 197, L. 1967; amd. Secs. 28, 48, Ch. 349, L. 1974; R.C.M. 1947, 69-4102(1), (2), 69-4401; amd. Sec. 4, Ch. 228, L. 1981; amd. Sec. 1, Ch. 402, L. 1991; amd. Sec. 104, Ch. 418, L. 1995; amd. Sec. 3, Ch. 515, L. 1995; amd. Sec. 279, Ch. 546, L. 1995.

Cross-References

Determination of death, 50-22-101.

50-15-102. Statewide system of vital statistics to be established. The department shall establish a statewide system of vital statistics and adopt rules for gathering, recording, using, amending, and preserving vital statistics and vital records.

History: En. Sec. 42, Ch. 197, L. 1967; amd. Sec. 104, Ch. 349, L. 1974; R.C.M. 1947, 69-4402; amd. Sec. 4, Ch. 515, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Confidentiality of health care information, Title 50, ch. 16, part 5.

50-15-103. Duties of department. The department shall:

(1) divide the state into registration districts and change districts as necessary;

(2) promulgate rules necessary to implement this chapter;

(3) administer and enforce the provisions of this chapter and rules adopted to implement this chapter;

(4) conduct training programs to promote uniformity of policy and procedures throughout the state in matters pertaining to the system of vital statistics;

(5) prescribe, furnish, and distribute forms required by this chapter or rules adopted pursuant to this chapter or prescribe other means for the transmission of data that will accomplish complete and accurate reporting and registration; and

(6) prepare and publish reports of vital statistics of this state.

History: En. Sec. 43, Ch. 197, L. 1967; amd. Secs. 107 and 109, Ch. 349, L. 1974; R.C.M. 1947, 69-4403; amd. Sec. 5, Ch. 515, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-15-104. Appointment and supervision of local registrars. The department shall:

(1) appoint local registrars;

(2) supervise local registrars and other persons required to comply with this chapter.

History: **En. Sec. 49, Ch. 197, L. 1967; amd. Sec. 51, Ch. 349, L. 1974; R.C.M. 1947, 69-4409.**

50-15-105. Appointment of deputies authorized. With approval of the department, local registrars may appoint deputies.

History: **En. Sec. 50, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4410(part).**

50-15-106. Registrars and deputies to report violations. Local registrars and deputies shall immediately report violations of this chapter or rules of the department to the department.

History: **En. Sec. 50, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4410(part).**

50-15-107. Payment of fees to local registrars. (1) The department may specify by regulation a fee to be paid each local registrar for each complete birth, death, or fetal death certificate forwarded by the local registrar to the department or a monthly report stating the local registrar did not file certificates.

(2) The department shall annually certify to the county treasurer the number of births, fetal deaths, deaths, or monthly reports received from his county with the names of the local registrars and the amount due each.

(3) The treasurer shall pay each local registrar out of the county general fund.

History: **En. Sec. 71, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4431.**

Cross-References

Fees to be charged by County Clerk for copies, 7-4-2631.

50-15-108. Duty to furnish information. (1) Any person having knowledge of the fact shall furnish information he possesses about a birth, death, fetal death, marriage, dissolution of marriage, or invalid marriage upon demand of the department.

(2) The person in charge of any institution or facility for the care of persons shall record and report all data required by this chapter relating to inmates or patients of the institution or facility.

History: **(1)En. Sec. 75, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; Sec. 69-4435, R.C.M. 1947; (2)En. Sec. 70, Ch. 197, L. 1967; Sec. 69-4430, R.C.M. 1947; R.C.M. 1947, 69-4430, 69-4435; amd. Sec. 5, Ch. 228, L. 1981.**

50-15-109. Certificates. (1) All certificates shall include information required by the department.

(2) Local registrars shall forward original certificates to the department, file a duplicate copy with the county clerk and recorder, and retain a triplicate copy.

(3) Local registrars shall not issue certified copies of certificates.

(4) Certificates filed within 6 months after the time prescribed by the department shall be prima facie evidence of the facts stated in the certificates. Data pertaining to the father of a child is prima facie evidence only if the alleged father is the husband of the mother. If the alleged father is not the husband of the mother, data pertaining to the alleged father is not evidence in any

proceedings adverse to his interests, his heirs, next of kin, devisees, legatees, or other successors in interest.

History: En. Secs. 51, 52, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4411, 69-4412.

Cross-References

Uniform Parentage Act, Title 40, ch. 6, part 1.

50-15-110. Repealed. Sec. 20, Ch. 515, L. 1995.

History: En. Sec. 46, Ch. 197, L. 1967; amd. Sec. 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4406.

50-15-111. Certified copy fee. (1) The department shall prescribe, by rule, a fee for:

(a) a certified copy of certificates or records;

(b) a search of files or records when a copy is not made;

(c) a copy of information provided for statistical or administrative purposes as allowed by law;

(d) the replacement of a birth certificate subsequent to adoption, legitimation, paternity determination or acknowledgment, or court order;

(e) filing a delayed registration of a vital event;

(f) the amendment of a vital record, after 1 year from the date of filing; and

(g) other services specified by this chapter or by rule.

(2) Fees received under subsection (1) must be deposited in the state special revenue fund to be used by the department for:

(a) the maintenance of indexes to vital records;

(b) the preservation of vital records; and

(c) the administration of the system of vital statistics.

History: (1)En. Sec. 47, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 69-4407, R.C.M. 1947; (2)En. Sec. 48, Ch. 197, L. 1967; Sec. 69-4408, R.C.M. 1947; R.C.M. 1947, 69-4407(part), 69-4408; amd. Sec. 6, Ch. 228, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 587, L. 1983; amd. Sec. 6, Ch. 515, L. 1995.

Cross-References

Fund structure, Title 17, ch. 2.

50-15-112. Repealed. Sec. 20, Ch. 515, L. 1995.

History: En. Sec. 44, Ch. 197, L. 1967; amd. Sec. 49, Ch. 349, L. 1974; R.C.M. 1947, 69-4404(part); amd. Sec. 1, Ch. 178, L. 1979; amd. Sec. 1, Ch. 118, L. 1989; amd. Sec. 1, Ch. 456, L. 1989; amd. Sec. 1, Ch. 384, L. 1991.

50-15-113. Repealed. Sec. 20, Ch. 515, L. 1995.

History: En. Secs. 45, 47, Ch. 197, L. 1967; amd. Secs. 50, 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4405, 69-4407(part).

50-15-114. Unlawful acts and penalties. (1) It is unlawful to disclose data in the vital statistics records of the department, local registrars, or county clerk and recorder unless disclosure is authorized by law.

(2) A person shall be fined not more than $1,000, imprisoned not more than 1 year, or both, if:

(a) he willfully and knowingly makes any false statement in a report, record, or certificate required to be filed by law or in an application for an amendment thereof or willfully and knowingly supplies false information intending that the information be used in the preparation of any report, record, or certificate or amendment;

(b) without lawful authority and with the intent to deceive, he makes, alters, amends, or mutilates any report, record, or certificate required to be filed under law or a certified copy of the report, record, or certificate;

(c) he willfully and knowingly uses or attempts to use or furnish to another for use, for any purpose of deception, any certificate, record, report, or certified copy made, altered, amended, or mutilated;

(d) with the intention to deceive, he willfully uses or attempts to use any birth certificate or certified copy of a birth record knowing that such certificate or certified copy was issued upon a record which is false in whole or in part or which relates to the birth of another person;

(e) he willfully and knowingly furnishes a birth certificate or certified copy of a birth record with the intention that it be used by a person other than the person to whom the birth record relates.

(3) A person shall be fined not less than $25 or more than $500, imprisoned for not more than 30 days, or both, if:

(a) he knowingly transports or accepts for transportation, interment, or other disposition a dead body without an accompanying permit as provided by law;

(b) he refuses to provide information required by law;

(c) he willfully neglects or violates any of the provisions of law or refuses to perform any of the duties imposed upon him by law.

History: (1)En. Sec. 44, Ch. 197, L. 1967; amd. Sec. 49, Ch. 349, L. 1974; Sec. 69-4404, R.C.M. 1947; (2)En. Sec. 76, Ch. 197, L. 1967; Sec. 69-4436, R.C.M. 1947; (3)En. Sec. 77, Ch. 197, L. 1967; Sec. 69-4437, R.C.M. 1947; R.C.M. 1947, 69-4404(part), 69-4436, 69-4437; amd. Sec. 1, Ch. 487, L. 1989; amd. Sec. 2, Ch. 384, L. 1991.

Cross-References

Willfully defined, 1-1-204.

Knowingly defined, 1-1-204, 45-2-101.

General requirements of criminal act and mental state, 45-2-103.

Permit for disposition of body, 50-15-405.

50-15-115 through 50-15-120 reserved.

50-15-121. Copies from system of vital statistics. (1) Except as provided in subsections (6) and (7), the department and county clerk and recorders shall, upon receipt of an application, issue a certified copy or copies of a vital record or a part of a vital record to the registrant, the registrant's spouse, children, parents, or guardian, or an authorized representative. Other individuals may obtain certified copies when the individual demonstrates that the record is needed for the determination or protection of the individual's personal or property rights. The department shall adopt rules to further define those who may obtain copies of vital records filed under this chapter.

(2) All applications, forms, and procedures used in the issuance of certified copies of vital records in the state must be uniform and prepared or approved by the department. All certified copies must contain security features that deter the document from being altered, counterfeited, duplicated, or simulated without ready detection that there have been these changes to the document.

(3) Each copy issued must show the date of filing. Copies issued from amended records must be marked and must show the effective date of the amendment. Copies issued from delayed records must be marked, must include

the date of filing, and must contain a statement of the evidence used to establish the delayed certificate. A copy issued of a certificate of foreign birth must indicate the fact of foreign birth and the date of birth (if known), must show the actual place of birth, and must state that the certificate is not proof of United States citizenship for the adoptive child.

(4) A certified copy or other copy of a death certificate must be issued upon request of any person.

(5) A certified copy of a vital record or any part of a vital record, issued in accordance with subsections (1) through (3), must be considered for all purposes the same as the original. The admissibility of a certificate or vital record filed more than 1 year after the event or after a corrective record is filed, of a vital record that has been amended, or of a certificate of foreign birth must be determined by the judicial or administrative body or official before whom the certificate is offered as evidence.

(6) This section may not be construed to permit disclosure of confidential information contained in a birth certificate for medical or health use or of information for statistical purposes only contained in a certificate of marriage or report of dissolution of marriage unless disclosure is specifically authorized by law for statistical or research purposes or unless ordered by a court.

(7) (a) When the department receives information that a certificate may have been registered through fraud or misrepresentation, it shall withhold issuance of the certificate or any copy of that certificate pending issuance of an order after an administrative contested case hearing before the department to determine whether fraud or misrepresentation has occurred.

(b) The hearing provided for in subsection (7)(a) must be conducted pursuant to the Montana Administrative Procedure Act. In the proceeding, the department shall notify the registrant or the registrant's authorized representative and provide the registrant or the representative the opportunity to be heard.

(c) If, upon conclusion of the hearing, fraud or misrepresentation is not found, the department may issue the certificate or copies of the certificate in question.

(d) If, upon conclusion of the hearing, fraud or misrepresentation is found, the department may not register the certificate unless ordered to do so by a court.

(e) An affected person may appeal the department's decision to the district court as provided in Title 2, chapter 4, part 7.

(8) A person may not prepare or issue any certificate that purports to be an original or certified copy, except as authorized in this chapter or rules adopted to implement this chapter.

(9) The department may, by rule, prescribe details for the hearing and appellate procedures contained in this section.

History: En. Sec. 7, Ch. 515, L. 1995; amd. Sec. 1, Ch. 118, L. 1997; amd. Sec. 13, Ch. 416, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 416 in (4) after "certificate" substituted "must be issued upon request of any person" for "containing information or data that would identify any person or institution named in a certificate or report and the cause of death information may not be issued, except as follows:

(a) upon specific request of the spouse, children, parents, or other next of kin of the decedent or their respective authorized representatives, as specified by department rule;

(b) when a documented need for the cause of death to establish a legal right or claim has been demonstrated, as specified by department rule;

(c) when the request for the copy is made by or on behalf of a person or entity that provides monetary benefits to the decedent's survivors or beneficiaries, as may be specified by department rule;

(d) upon specific request by federal, state, or local agencies for research or administrative purposes and when approved for release by the department;

(e) when needed for research activities and approved for release by the department; or

(f) upon receipt by the department of an order directed to the department from a court of competent jurisdiction ordering the release"; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Contested case procedure, Title 2, ch. 4, part 6.

Uniform Parentage Act, Title 40, ch. 6, part 1.

Perjury and other falsification in official matters, Title 45, ch. 7, part 2.

Confidentiality of health care information, Title 50, ch. 16, part 5.

50-15-122. Disclosure of information from vital records or vital reports — rules. (1) It is the policy of the state to protect the integrity of vital records and vital reports, to ensure their proper use, and to ensure the efficient and proper administration of the system of vital statistics. In furtherance of the policy, it is unlawful for any person to permit inspection of or to disclose information contained in vital records or in vital reports or to copy or issue a copy of all or a part of a record or report unless authorized by this chapter, by administrative rule, or by order of a court of competent jurisdiction. Rules adopted under this chapter must provide for adequate standards of security and confidentiality of vital records.

(2) The execution of a research agreement that protects the confidentiality of the information provided to a researcher in response to a written request is required for disclosure of information that may identify a person or institution named in a vital record or report. This agreement must be made in compliance with this chapter or rules adopted to implement this chapter. Each agreement must prohibit the release by the researcher of any information that might identify a person or institution, other than releases that may be provided for in the agreement.

(3) This section does not prohibit the release of information or data that does not identify a person or institution named in a vital record or report.

(4) A challenge to a decision of a custodian of vital records to refuse disclosing information from records, as prescribed by this section and rules issued to implement this section, must be made before the department in the case of a county clerk and recorder and to a district court in the case of the department. A challenge before the department must be in the form of a contested case pursuant to the Montana Administrative Procedure Act. An appeal of the department's decision to district court must be made by filing an original action pursuant to the Montana Rules of Civil Procedure.

(5) Immediately upon the filing of a record with the department, the fact that a birth or death has occurred or a record of marriage or dissolution of marriage may be released to the public without restriction. Notwithstanding the restrictions provided in 50-15-121, complete birth records may be released

to the public 30 years after the date of birth. The department shall adopt rules that provide for the continued safekeeping of the records.

(6) The department may provide the national center for health statistics or a successor agency with copies of records, reports, or data from the system of vital statistics that are required for national statistics. The department shall enter into an agreement with the center, indicating the scope of disclosure of information, as required by this chapter or rules implementing this chapter, concerning the use of records, reports, or data for statistical or research purposes. The agreement must set forth the financial support to be provided by the center for the collection, processing, and transmission of the records, reports, or data. Upon written request of the center, the department may approve, by amendment to the agreement, additional statistical or research uses of the records, reports, or data supplied under the agreement.

(7) Federal, state, and local governmental agencies may, subject to this chapter and rules implementing this chapter, upon request, be furnished copies of records or data from the system of vital statistics if the copies or data is used solely in the conduct of the agency's official duties. The department shall, upon request by a licensed adoption agency, provide a birth certificate and related records for purposes of adoption, termination of parental rights, custody actions, paternity actions, child support actions, social security eligibility determinations, or Indian tribal enrollment determinations.

(8) Subject to this chapter and rules implementing this chapter, the department may, by agreement, transmit copies of records and other reports required to be compiled by this chapter to offices of vital statistics outside this state when the records or reports concern residents of those jurisdictions or persons born in those jurisdictions. The agreement must specify the statistical and administrative purposes for which the records may be used, and the agreement must provide instructions concerning proper retention, confidentiality requirements, and disposition of the copies. Copies received by the department from offices of vital statistics in other states must be handled as provided for in this subsection.

History: En. Sec. 8, Ch. 515, L. 1995; amd. Sec. 14, Ch. 416, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 416 in two places in second sentence in (5) after "birth" deleted "or death"; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Confidentiality of health care information, Title 50, ch. 16, part 5.

50-15-123. Preservation of vital records. To preserve vital records, the department may prepare typewritten, photographic, electronic, or other reproductions of certificates, vital records, or reports kept by the department. The reproductions when certified and approved by the department must be accepted as the original records. The department shall maintain original vital records intact and in their original form on file at the department.

History: En. Sec. 9, Ch. 515, L. 1995.

50-15-124. Content of certificates, records, and reports. (1) In order to promote and maintain nationwide uniformity in the system of vital statistics, the department, in the preparation of the forms of certificates, vital records, or reports required by this chapter or rules adopted under this chapter, may include the elements in forms and the forms recommended by the national center for health statistics for implementing a system of vital statistics.

(2) Each certificate, record, report, and other document required by this chapter must be prepared in a format approved by the department. All vital records must contain the date of filing.

(3) Information required in certificates, forms, records, or reports authorized by this chapter may be filed, verified, registered, and stored by photographic, electronic, or other means as prescribed by the department.

History: En. Sec. 10, Ch. 515, L. 1995.

Part 2

Birth

Part Cross-References

County Clerk to record births, 7-4-2613, 7-4-2619.

50-15-201. Repealed. Sec. 20, Ch. 515, L. 1995.

History: En. Sec. 53, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4413.

50-15-202. Unattended birth. (1) If a birth is unattended and neither parent is able to prepare a birth certificate, the local registrar shall:

(a) secure information from any person having knowledge of the birth;

(b) prepare and file a birth certificate;

(c) within the time prescribed by the department, file a supplementary report furnishing information omitted from the original birth certificate if additional information is received.

(2) Birth certificates completed by a supplementary report shall not be considered "delayed" or "altered".

History: En. Sec. 54, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4414.

50-15-203. Child of unknown parentage. (1) A person who assumes custody of a child of unknown parentage shall immediately file with the local registrar a written report which shall constitute a birth certificate.

(2) The report shall contain:

(a) the date and place of finding or assumption of custody;

(b) sex, color or race, and approximate age of the child;

(c) name and address of the person or institution with whom the child has been placed for care;

(d) name given to the child by the finder or person who assumes custody.

(3) The place where the child was found or custody assumed shall be the place of birth.

(4) The date of birth shall be determined by approximation.

(5) If the child is identified and a regular birth certificate is found or obtained, the report shall be sealed and may be opened only by court order.

History: En. Sec. 55, Ch. 197, L. 1967; R.C.M. 1947, 69-4415.

50-15-204. Delayed or amended birth certificate. (1) (a) If a certificate of birth for a person born in this state has not been filed within 1 year of the birth, a delayed certificate of birth may be filed in accordance with rules adopted by the department. A delayed certificate of birth may not be registered until the requirements regarding facts pertaining to the delayed certificate, as specified by rule, have been met.

(b) A birth of a person in this state whose name has not been registered within 1 year after the birth must be registered on a delayed certificate of birth form. The delayed certificate must contain the date of registration and a summary statement of the information submitted to explain the delayed registration.

(c) A delayed certificate of birth may not be registered for a deceased person.

(d) The department may not register a delayed certificate of birth if an applicant for a delayed certificate of birth does not submit the minimum documentation required by rule for delayed registration or if the department has cause to question the validity or adequacy of the applicant's sworn statement or the documentation provided to establish the facts and the deficiencies are not corrected. The department shall advise the applicant of the reasons for the refusal to register the delayed certificate of birth. The department shall advise the applicant of the right to seek an order from a court of competent jurisdiction to obtain registration of the delayed certificate of birth as provided in 50-15-222.

(e) The department may, by rule, provide for the dismissal of an application for registration of a delayed certificate of birth that is not actively pursued.

(2) The department or its designee may amend a birth, death, or fetal death certificate upon submitting proof as required by the department.

(3) The department shall adopt rules establishing the circumstances under which vital records may be corrected or amended and the procedure to correct or amend those records.

(4) If birth certificates are altered by the department after filing, the certificate must show the date of the alteration and the mark "altered". A summary statement of the evidence in support of the alteration must be endorsed on the certificate.

(5) The probative value of a "delayed" or "altered" certificate of birth is determined by the judicial or administrative body before whom the certificate is offered as evidence.

History: (1), (2)En. Sec. 56, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; Sec. 69-4416, R.C.M. 1947; (3)En. Sec. 57, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; Sec. 69-4417, R.C.M. 1947; (4)En. Sec. 59, Ch. 197, L. 1967; Sec. 69-4419, R.C.M. 1947; R.C.M. 1947, 69-4416, 69-4417, 69-4419; amd. Sec. 12, Ch. 515, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Proof of contents of public record, Rule 1005, M.R.Ev. (see Title 26, ch. 10).

50-15-205. Repealed. Sec. 20, Ch. 515, L. 1995.

History: En. Sec. 58, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4418.

50-15-206. Repealed. Sec. 20, Ch. 515, L. 1995.

History: En. Sec. 62, Ch. 197, L. 1967; R.C.M. 1947, 69-4422; amd. Sec. 2, Ch. 178, L. 1979; amd. Sec. 67, Ch. 609, L. 1987; amd. Sec. 2, Ch. 118, L. 1989.

50-15-207. New birth certificate upon proof of legitimation. Upon receipt of proof of legitimation, the department shall prepare a new birth certificate in the new name of the person legitimated. Evidence upon which the new certificate is based and the original birth certificate shall be sealed and may be opened only upon court order. In case of legitimation, the department shall substitute records in the way provided in 50-15-304(2) for records of adoption.

History: En. Sec. 63, Ch. 197, L. 1967; amd. Sec. 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4423.

50-15-208 and 50-15-209 reserved.

50-15-210. Paternity acknowledgment. (1) Upon the birth of a child to a mother unmarried at the time of birth, the administrator or person in charge of a hospital or other institution in which the birth occurs or the midwife who attends the birth shall:

(a) provide an opportunity for the child's mother and alleged father to complete an acknowledgment of paternity pursuant to 40-6-105;

(b) provide written information, furnished by the department of public health and human services, describing the rights and responsibilities of paternity, the benefits of having a child's paternity established, and the child's right to receive support; and

(c) forward a copy of an acknowledgment signed by the mother and the father to the department.

(2) The hospital, institution, or midwife is entitled to reimbursement for reasonable costs of obtaining an acknowledgment. The department of public health and human services shall establish the amount of reasonable costs, not to exceed the amount for which federal financial participation is available, and the procedures for claiming reimbursement.

(3) Hospitals, institutions, and midwives shall use forms prescribed by the department of public health and human services for the acknowledgment of paternity.

(4) If the child is born in this state, the department of public health and human services shall file an acknowledgment received under 40-6-105 or this section with the child's certificate of birth. If the child was not born in this state or if an acknowledgment received under 40-6-105 or this section cannot be filed with the child's certificate of birth, the department shall file the acknowledgment in an acknowledgment registry created and maintained for that purpose.

History: En. Sec. 2, Ch. 523, L. 1993; amd. Sec. 11, Ch. 70, L. 1995; amd. Sec. 91, Ch. 552, L. 1997.

Cross-References

Establishment of paternity — jurisdiction and venue, 40-5-231.

Establishment of paternity — notice of paternity determination, 40-5-232.

Establishment of paternity — administrative hearing, 40-5-233.

Paternity blood tests, 40-5-234.

Effect of order establishing paternity, 40-5-235.

Referral of paternity issue to District Court, 40-5-236.

District Court paternity proceedings, 40-5-237.

50-15-211 through 50-15-220 reserved.

50-15-221. Birth registration. (1) A certificate of birth must be filed as specified in this section with the department for each live birth that occurs in this state. Unless otherwise directed by the department, the certificate must be filed within the time prescribed by the department by rule after the birth. The birth certificate must be registered if it has been completed and filed in accordance with this section and rules adopted to implement this section.

(2) If a birth occurs in a health care facility, the birth certificate must be completed and filed by the attending physician or the physician's designee.

(3) If a birth occurs in or en route to a health care facility, the person in charge of the facility or the person's authorized designee shall obtain the personal data concerning the newborn child, prepare the certificate, and certify that the child was born alive at the place, at the time, and on the date stated. Certification may be by signature or by an approved electronic process. The person referenced in this subsection shall file the certificate as directed in subsection (1). The physician or other person in attendance at the birth shall provide the medical information required by the certificate within 72 hours after the birth.

(4) The department shall, by rule, determine what evidence may be required to establish the facts of birth if the birth occurs at a place other than a health care facility. In accordance with rules promulgated by the department, the certificate must be prepared and filed by one of the following persons in the indicated order of priority in subsections (4)(a) through (4)(e):

(a) the physician or the physician's designee or a midwife licensed pursuant to Title 37, chapter 27, in attendance at or immediately after the birth;

(b) a person in attendance at or immediately after the birth;

(c) the father or the mother;

(d) in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred; or

(e) the local registrar, if 50-15-202 applies.

(5) When a birth occurs on a moving conveyance within the United States and the newborn child is first removed from the conveyance in this state, the birth must be registered in this state by a person listed in subsection (4) and the place where the child is first removed from the conveyance is considered the place of birth. When a birth occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the child is first removed from the conveyance in this state, the birth must be registered by a person listed in subsection (4) in this state, but the certificate must indicate the actual place of birth insofar as the place can be determined.

(6) For the purposes of birth registration, the woman who gives birth to the child is considered to be the mother, unless otherwise provided by state law or determined by a court of competent jurisdiction prior to the filing of the birth certificate. Information about the father must be entered as provided in subsection (7).

(7) (a) If the mother was married at the time of conception or birth or between conception and birth, the name of the husband must be entered on the certificate as the father of the child, unless:

(i) other paternity has been determined by a court of competent jurisdiction;

(ii) the mother and the husband execute joint or separate affidavits attesting that the husband is not the father of the child. Affidavits must be notarized, and signatures of the mother and of the husband must be individually notarized on any joint affidavit. If affidavits are filed, information about the father must be omitted from the certificate.

(iii) the mother executes an affidavit attesting that the husband is not the father and names a putative father, the putative father executes an affidavit attesting paternity, and the husband executes an affidavit denying paternity. Affidavits may be joint or individual or a combination of joint and individual affidavits. Each signature on an affidavit must be individually notarized. If all affidavits are filed, the putative father must be shown as the father on the certificate.

(b) If the mother was not married at the time of conception or birth or between conception and birth, the name of the father may not be entered on the certificate without an affidavit of paternity signed by the mother and the person to be named as the father.

(c) If paternity of a child is determined by a court of competent jurisdiction, the name of the father and surname of the child must be entered on the certificate of birth in accordance with the finding and order of the court.

(d) If the father is not named on the certificate of birth, information about the father may not be entered on the certificate.

(e) Affidavits required under this subsection (7) must be filed with the department.

(8) Either parent of the child, or another informant, shall verify the accuracy of the personal data to be entered on the certificate in order to permit the filing of the certificate within the time prescribed in subsection (1).

(9) A certificate of birth filed after the time prescribed in subsection (1) but within 1 year from the date of birth must be registered by the natural parents, the adoptive parents, or the person having legal custody of the child, on the standard form of live birth certificate in the manner prescribed in this section and by rule. The certificate may not be designated as delayed. The department may require additional evidence in support of the facts of birth.

History: En. Sec. 11, Ch. 515, L. 1995.

Cross-References

Adoption of publication of rules, Title 2, ch. 4, part 3.

50-15-222. Judicial birth facts procedure. (1) If the department declines to register a certificate of birth under the provisions of 50-15-204 or 50-15-221, a petition signed and sworn to by the petitioner may be filed with the district court, seeking an order establishing a record of the date and place of the birth and the parentage of the person whose birth is to be registered.

(2) The petition must be made on a form adopted or approved by the department and must allege:

(a) that the person for whom a certificate of birth is sought was born in this state;

(b) that a certificate of birth of the person cannot be found at the department or at the office of the clerk and recorder;

(c) that diligent efforts by the petitioner have failed to obtain the evidence to establish entitlement to a certificate of birth required in accordance with this chapter and rules adopted pursuant to this chapter;

(d) that the department has declined to file a certificate of birth; and

(e) other allegations as may be required by law.

(3) The petition must be accompanied by all documentary evidence that was submitted to the department in support of the applicant's registration and by a statement of the reasons why the department declined to register the certificate of birth.

(4) The district court shall fix a time and place for hearing the petition and shall give the department 30 days' notice of the hearing. The department through its authorized representative shall appear and testify as a witness in the proceeding if determined necessary by the court.

(5) If the district court finds, from the evidence presented, that the person for whom a certificate of birth is sought was born in this state, it shall make findings as to the date and place of birth, parentage, and other relevant facts and shall issue an order establishing the certificate of birth. The order must include the findings and birth data to be registered, a description of the evidence presented, and the date of the court's action.

(6) The clerk of the court shall forward the order referred to in subsection (5) to the department not later than the 10th calendar day of the month following the month in which it was entered. The order must be registered by the department and constitutes the court-ordered certificate of birth.

History: En. Sec. 13, Ch. 515, L. 1995.

50-15-223. Certificates of birth following adoption, legitimation, or determination or acknowledgment of paternity. (1) The department shall establish a new certificate of birth for a person born in this state when the department receives the following:

(a) a certificate of adoption, as provided in 50-15-311, a certificate of adoption prepared and filed in accordance with the laws of another state or foreign country, or a certified copy of the decree of adoption, together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth; or

(b) a request that a new certificate be established if the request shows that:

(i) a district court, court of appropriate jurisdiction in another state, or administrative agency in this state or another state with appropriate jurisdiction has determined the paternity of the person and information necessary to identify the original certificate of birth is provided; or

(ii) both parents have acknowledged the paternity of the person and request that the surname be changed from that shown on the original certificate.

(2) The date of birth and the city and county of birth must be stated in the newly established certificate of birth. The department shall substitute the new certificate of birth for the original certificate of birth in the files. The original certificate of birth and the evidence of adoption, legitimation, court determination of paternity, or paternity acknowledgment are only subject to inspection, except upon order of a district court, as provided by rule, as provided in Title 42, chapter 6, part 1, or as otherwise provided by state law.

(3) Upon receipt of a report of an amended decree of adoption, the department shall amend the certificate of birth as provided in rules adopted by the department.

(4) Upon receipt of a report or decree of annulment of adoption, the department shall restore the original certificate of birth issued before the adoption to its place in the files and the certificate of birth issued upon adoption and evidence pertaining to the adoption proceeding may not be open to inspection, except upon order of a district court or as provided by rule adopted by the department.

(5) Upon written request of both parents and receipt of a sworn acknowledgment and other credible evidence of paternity signed by both parents of a child born outside of marriage, the department shall reflect the paternity on the child's certificate of birth if paternity is not already shown on the certificate of birth.

(6) If a certificate of birth is not on file for the adopted child for whom a new certificate of birth is to be established under this section and the date and place of birth have not been determined in the adoption or paternity proceedings pertaining to the child, a delayed certificate of birth must be filed with the department, as provided in 50-15-204, before a new certificate of birth may be established. The new certificate of birth must be prepared on a form prescribed by the department.

(7) When a new certificate of birth is established by the department, the department may direct that all copies of the original certificate of birth in the custody of any other custodian of vital records in this state either be sealed from inspection or be forwarded to the department for sealing from inspection.

(8) (a) The department shall, upon request of the adopting parents, prepare and register a certificate of birth in this state for a person born in a foreign country who is not a citizen of the United States and who was adopted through a district court in this state.

(b) The certificate of birth must be established by the department upon receipt of a certificate of adoption, conforming to the requirements of 50-15-311, from the court that reflects entry of an order of adoption, proof of the date and place of the child's birth, and a request for the establishment of a certificate of birth from the court, the adopting parents, or the adopted person, if the person is 18 years of age or older.

(c) The certificate of birth must be labeled "Certificate of Foreign Birth" and must contain the actual country of birth. A statement must be included on the certificate indicating that it is not evidence of United States citizenship for the child for whom it is issued.

(d) After registration of the certificate of birth in the new name of the adopted person, the department shall seal and file the certificate of adoption, which is not subject to inspection, except upon order of the district court, as provided by rule, or as otherwise provided by state law.

(9) The department may promulgate rules necessary to implement this section.

History: En. Sec. 14, Ch. 515, L. 1995; amd. Sec. 169, Ch. 480, L. 1997; amd. Sec. 92, Ch. 552, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 3
Marriage and Adoption

Part Cross-References

County Clerk to maintain index of marriage certificates, 7-4-2619.

Marriage license requirements, Title 40, ch. 1, part 2.

Declaration of marriage without solemnization, 40-1-311.

Registration of marriages, 40-1-321.

Certificates of marriage and records of certificates as evidence of marriage, 40-1-322.

Proof of solemnized marriage when no record, 40-1-323.

50-15-301. Marriage certificates. Before the 10th day of each month, each clerk of a district court shall report marriage certificates filed with him during the preceding calendar month to the department. Reports shall be on forms and contain information prescribed by the department. The applicant for a marriage license shall pay a recording fee of 25 cents to the officer authorized to issue the marriage license.

History: En. Sec. 72, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4432; amd. Sec. 7, Ch. 228, L. 1981.

Cross-References

Marriage licenses, Title 40, ch. 1, part 2.

50-15-302. Clerk to report decree of dissolution or declaration of invalidity of marriage. (1) At the same time a decree of dissolution or declaration of invalidity of marriage is filed, the clerk of court shall prepare a report to the department on the form prescribed by the department. Parties to the action or their attorneys shall supply the clerk with necessary information.

(2) The report shall include the:

(a) name, age, birthplace, residence, race or color, and occupation of each party;

(b) number, date, and place of any previous marriage of either party;

(c) number of children under 18 years of age in custody of either party and residing with him;

(d) grounds for the action;

(e) number of the cause of action;

(f) county and judicial district where the action is filed; and

(g) date of judgment and the party which was granted it.

History: En. Sec. 74, Ch. 197, L. 1967; amd. Secs. 107, 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4434; amd. Sec. 4, Ch. 37, L. 1979.

Cross-References

Declaration of invalidity, Title 40, ch. 1, part 4.

Dissolution of marriage, Title 40, ch. 4, part 1.

50-15-303. Certificates of dissolution of marriage or declaration of invalidity of marriage. Before the 10th day of each month, the clerk of the court shall prepare and forward to the department a certificate for each decree of dissolution of marriage or declaration of invalidity of marriage that became final during the preceding calendar month. Certificates must be on forms prescribed by the department.

History: En. Sec. 73, Ch. 197, L. 1967; amd. Secs. 107, 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4433; amd. Sec. 5, Ch. 37, L. 1979; amd. Sec. 8, Ch. 228, L. 1981; amd. Sec. 15, Ch. 515, L. 1995.

Cross-References

Declaration of invalidity, Title 40, ch. 1, part 4.

Termination of marriage, Title 40, ch. 4.

50-15-304. Substitute birth certificate for person adopted. (1) The procedure for issuing a substitute birth certificate for a person born in Montana and adopted is as follows:

(a) Before the 16th day of the month following the order of adoption, the clerk of the district court shall forward a certified copy of the final order of adoption to the department or the department may accept a certified copy of a final order of adoption from a court of competent jurisdiction of another state of the United States or a tribal court of competent jurisdiction.

(b) The department shall prepare a substitute certificate containing:

(i) the new name of the adopted person;

(ii) the true date and place of birth and the sex of the adopted person;

(iii) statistical facts concerning the adoptive parents in place of the natural parents;

(iv) the words "department of public health and human services" substituted for the words "attendant's own signature"; and

(v) dates of recording as shown on the original birth certificate.

(2) The procedure for recording a substitute birth certificate for a person born in Montana and adopted is as follows:

(a) The department shall send copies of the substitute birth certificate to the local registrar and to the county clerk and recorder.

(b) The local registrar and county clerk and recorder shall immediately enter the substitute birth certificate in their files and forward copies of the original birth record to the department.

(c) The department shall seal original birth records and open them only on order of a court.

(3) On receipt of a certified copy of a court order annulling an adoption, the department shall restore the original birth certificate to its place in its files and notify the local registrar and county clerk and recorder.

History: (1)En. Sec. 60, Ch. 197, L. 1967; amd. Sec. 52, Ch. 349, L. 1974; amd. Sec. 1, Ch. 162, L. 1977; Sec. 69-4420, R.C.M. 1947; (2), (3)En. Sec. 61, Ch. 197, L. 1967; amd. Sec. 53, Ch. 349, L. 1974; Sec. 69-4421, R.C.M. 1947; R.C.M. 1947, 69-4420, 69-4421; amd. Sec. 9, Ch. 228, L. 1981; amd. Sec. 105, Ch. 418, L. 1995; amd. Sec. 282, Ch. 546, L. 1995.

Cross-References

Office of County Clerk, Title 7, ch. 4, part 26.

50-15-305 through 50-15-310 reserved.

50-15-311. Certificates of adoption or annulment of adoption — report of amended or annulled adoption decree. (1) For each adoption decreed by a district court, the decree must require the clerk of the court to prepare a certificate of adoption on a form prescribed and furnished by the department. The certificate of adoption must include facts that are necessary to locate and identify the date and place of birth of the adopted person or, in the case of a person who was born in a foreign country, evidence from sources determined to be reliable by the district court as to the date and place of birth of the person. The certificate of adoption must also contain information necessary to establish a new certificate of birth for the person adopted and must identify the order of adoption. The clerk of the court shall certify the certificate of adoption.

(2) Information necessary for the clerk of the court to prepare the certificate of adoption must be furnished, by each petitioner for adoption on a form prescribed by the department, at the time that the petition for adoption is filed. A person or agency having knowledge of facts, as described in subsection (1), may be required by the court to supply the court with information necessary to complete the certificate of adoption. The district court may make the provision of the information for the preparation of a certificate of adoption a prerequisite to the issuance of a final decree.

(3) Whenever an adoption decree is amended or annulled, the clerk of the court shall prepare a report. The report must include the facts that are necessary to identify the original certificate of adoption and the facts amended in the adoption decree that are necessary to properly amend the birth record.

(4) No later than the 16th day of each calendar month or more frequently, as directed by the department, the clerk of the court shall forward to the department certificates of adoption, reports of annulment of adoption, and amendments of decrees of adoption that were entered in the preceding month, together with any related reports required by the department.

(5) When the department receives a certificate of adoption, report of annulment of adoption, or amendment of a decree of adoption for a person born outside this state, the department shall forward the certificate, report, or amendment to the state registrar or the agency charged with registering vital statistics in the state where the person was born.

(6) If the birth of an adopted child occurred in a foreign country and the adopted child was not a citizen of the United States at the time of birth, the department shall prepare a "Certificate of Foreign Birth" as required by 50-15-223. If the adopted child was born in Canada, the department shall send a copy of the certificate of adoption, report of annulment of adoption, or amendment of a decree of adoption to the appropriate registration authority in Canada.

(7) If the adopted child born in a foreign country was a citizen of the United States at the time of birth, the department may not prepare a "Certificate of Foreign Birth" and shall notify the adoptive parents of the procedures for obtaining a revised certificate of birth for their child through the United States department of state.

(8) A deceased person cannot be adopted.

History: En. Sec. 16, Ch. 515, L. 1995.

Part 4

Death

Part Cross-References

Office of County Coroner, Title 7, ch. 4, part 29.

50-15-401. Repealed. Sec. 3, Ch. 118, L. 1997.

History: **En. Sec. 64, Ch. 197, L. 1967; R.C.M. 1947, 69-4424(1); amd. Sec. 1, Ch. 502, L. 1989.**

50-15-402. Copy to be forwarded to deceased's county of residence. If a state resident dies outside the county of his residence, the clerk and recorder shall send a certified copy of the death certificate to the clerk and recorder of the deceased's county of residence. The copy shall be considered the same as the original.

History: **En. Sec. 64, Ch. 197, L. 1967; R.C.M. 1947, 69-4424(2).**

Cross-References

Residence — rules for determining, 1-1-215.

Office of County Clerk, Title 7, ch. 4, part 26.

50-15-403. *(Bracketed language effective January 1, 2001)* **Preparation and filing of death or fetal death certificate.** (1) A person in charge of disposition of a dead body or fetus that weighs at least 350 grams at death or, if the weight is unknown, has reached 20 completed weeks of gestation at death shall obtain personal data on the deceased[, including the deceased's social security number, if any,] or, in the case of a fetal death, on the parents that is required by the department from persons best qualified to supply the data and enter it on the death or fetal death certificate.

(2) The person in charge of disposition of the dead body or fetus shall present the death certificate to the certifying physician or the coroner having jurisdiction for medical certification of the cause of death. The medical certification must be completed by the physician or the coroner within the timeframe established by the department by rule. The person in charge of disposition shall obtain the completed certification of the cause of death from the physician or the coroner and shall, within the time that the department may prescribe by rule, file the death or fetal death certificate with the local registrar in the registration area where the death occurred or, if the place of death is unknown, where the dead body was discovered.

(3) If a dead body is found in this state but the place of death is unknown, the place where the body is found must be shown as the place of death on the death certificate. If the date of death is unknown, then the approximate date must be entered on the certificate. If the date cannot be approximated, the date that the body was found must be entered as the date of death, and the certificate must indicate that fact.

(4) When a death occurs in a moving vehicle, as defined in 45-2-101, in the United States and the body is first removed from the vehicle in this state, the death must be registered in this state and the place where the body is first removed is considered the place of death. When a death occurs in a moving vehicle while in international air space or in a foreign country or its air space and the body is first removed from the vehicle in this state, the death must be registered in this state, but the actual place of death, insofar as it can be determined, must be entered on the death certificate. *(Bracketed language terminates on occurrence of contingency—sec. 3(2), Ch. 27, L. 1999.)*

History: **En. Sec. 65, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4425; amd. Sec. 28, Ch. 7, L. 1979; amd. Sec. 3, Ch. 287, L. 1993; amd. Sec. 17, Ch. 515, L. 1995; amd. Sec. 2, Ch. 118, L. 1997; amd. Sec. 93, Ch. 552, L. 1997; amd. Sec. 2, Ch. 27, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 27 in (1) after "on the deceased" inserted ", including the deceased's social security number, if any". Amendment effective January 1, 2001. The codifier has bracketed the amendment. See Effective Date — Contingent Termination note.

Effective Date — Contingent Termination: Section 3(2), Ch. 27, L. 1999, provided: "(2) [Section 2] is effective January 1, 2001, unless prior to that date the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted this state an exemption from the requirement to have a social security number on a death certificate and the exemption covers the period January 1, 2001, through July 1, 2001, in which case [section 2] is void."

50-15-404. Preparation of certificate when death not medically attended. (1) If the death or fetal death occurred without medical attendance or the physician last in attendance failed to sign the death certificate, the local registrar may complete the certificate on the basis of information received from persons having knowledge of the facts.

(2) If it appears the death or fetal death resulted from other than natural causes, the local registrar shall notify the coroner and the state medical examiner for investigation and certification.

History: En. Sec. 66, Ch. 197, L. 1967; R.C.M. 1947, 66-4426; amd. Sec. 29, Ch. 7, L. 1979.

50-15-405. Authorization for removal of body from place of death. (1) Except as provided in subsection (2), a dead body may be removed from the place of death only upon the written authorization or oral authorization, which must be reduced to writing within 24 hours, of the physician in attendance at death or the physician's designee, the coroner having jurisdiction, or a mortician licensed under 37-19-302.

(2) If the death requires inquiry under 46-4-122, the written authorization may only be granted by the coroner having jurisdiction or the coroner's designee or by the state medical examiner if the coroner fails to act. However, when the only reason for inquiry under 46-4-122 is that the body is to be cremated, the coroner may grant oral authorization for cremation of the body, which must be reduced to writing as specified under subsection (1) by the coroner.

(3) The written authorization to move a dead body or, when applicable, to cremate a dead body must be made in quadruplicate on a form provided by the department. The person in charge of disposition of the dead body, the coroner having jurisdiction, and the local registrar must each be provided with and retain a copy of the authorization. A fourth copy may accompany the body to final disposition, as necessary.

(4) A written authorization issued under this section permits removal, transportation, and final disposition of a dead body.

History: En. Secs. 67, 68, Ch. 197, L. 1967; R.C.M. 1947, 69-4427, 69-4428; amd. Sec. 30, Ch. 7, L. 1979; amd. Sec. 4, Ch. 287, L. 1993; amd. Sec. 18, Ch. 515, L. 1995.

50-15-406. Body brought into state for disposition. If a body is brought into the state for burial or other disposition accompanied by a permit, the local registrar shall endorse the permit and keep a record of it.

History: En. Sec. 69, Ch. 197, L. 1967; R.C.M. 1947, 69-4429.

50-15-407. Disinterment permit. (1) A body, after burial, may be disinterred for reinterment or transport after a permit is obtained from the local registrar of the jurisdiction where the body is interred.

(2) Administration of this section is in the department, which shall adopt rules accordingly. The rules shall provide that, as a precondition to the permit, the applicant make a showing of reasonable cause for the disinterment.

(3) This section provides a supplementary procedure for disinterment of a dead body and is not amendatory to or repealing of any other act.

History: En. Sec. 1, Ch. 481, L. 1973; amd. Sec. 19, Ch. 187, L. 1977; R.C.M. 1947, 69-4428.1.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Human Skeletal Remains and Burial Site Protection Act, Title 22, ch. 3, part 8.

Penalty for disturbing corpses, 44-3-404.

Authority to order exhumation for autopsy, 46-4-103.

Power of County Coroner to order exhumation, 46-4-110.

50-15-408 through 50-15-410 reserved.

50-15-411. Sudden infant death syndrome — findings — definition. (1) As used in 50-15-412 and this section, "sudden infant death syndrome" means the sudden death of an infant under 1 year of age that remains unexplained after a thorough case investigation, including the performance of a complete autopsy, an examination of the death scene, and a review of the clinical history.

(2) The legislature recognizes that research has shown that sudden infant death syndrome is a leading cause of death among children from 1 month to 1 year of age. The legislature finds and declares that sudden infant death syndrome is a serious problem within Montana and that public interest is served by research and study of sudden infant death syndrome and its potential causes and indications.

History: En. Sec. 1, Ch. 351, L. 1997.

50-15-412. Cause of death — sudden infant death syndrome. When the coroner's findings are consistent with sudden infant death syndrome, the coroner may state on the death certificate that sudden infant death syndrome was the cause of death.

History: En. Sec. 2, Ch. 351, L. 1997.

Cross-References

Office of County Coroner, Title 7, ch. 4, part 29.

Investigation of death — autopsy, Title 46, ch. 4, part 1.

Cadavers and autopsies, Title 50, ch. 21, part 1.

Parts 5 and 6 reserved

Part 7

Tumor Registry

50-15-701. Short title. This part may be cited as the "Tumor Registry Act".

History: En. Sec. 1, Ch. 354, L. 1981.

50-15-702. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Health care practitioner" means a person licensed pursuant to Title 37, chapter 3, to practice medicine or pursuant to Title 37, chapter 4, to practice dentistry.

(3) "Hospital" means a facility that provides, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons.

(4) "Medical services" means diagnosis or treatment of illness in a human being by or under the supervision of a health care practitioner.

History: En. Sec. 2, Ch. 354, L. 1981; amd. Sec. 106, Ch. 418, L. 1995; amd. Sec. 283, Ch. 546, L. 1995; amd. Sec. 1, Ch. 101, L. 1997.

50-15-703. Duty to report tumors. The following persons or entities shall report to the department on forms provided by the department all medical and personal information as specified in rules of the department and laboratory results pertaining to the treatment and condition of a person with a reportable tumor:

(1) a hospital that provides medical services relating to the tumor;

(2) a clinical laboratory, as defined in 50-5-101, that is not owned or operated by a hospital and that provides laboratory services relating to the tumor; and

(3) a health care practitioner or health care facility, not covered by subsection (1) or (2), providing medical services relating to the tumor.

History: En. Sec. 3, Ch. 354, L. 1981; amd. Sec. 1, Ch. 12, L. 1985; amd. Sec. 2, Ch. 101, L. 1997.

50-15-704. Confidentiality. Information received by the department pursuant to this part may not be released unless:

(1) it is in statistical, nonidentifiable form;

(2) the provisions of Title 50, chapter 16, part 6, are satisfied;

(3) the release or transfer is to a person or organization that is qualified to perform data processing or data analysis and that has safeguards against unauthorized disclosure of that information;

(4) the release or transfer is to a central tumor registry of another state and is of information concerning a person who is residing in that state; or

(5) the release is to a health care practitioner or health care facility that is providing or has provided medical services to a person who has or has had a reportable tumor.

History: En. Sec. 4, Ch. 354, L. 1981; amd. Sec. 27, Ch. 632, L. 1987; amd. Sec. 3, Ch. 101, L. 1997.

Cross-References

Public participation in governmental operations, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3.

Right of privacy, Art. II, sec. 10, Mont. Const.

Confidentiality of health care information, Title 50, ch. 16, part 5.

50-15-705. Tumor registry. The department shall maintain a registry containing the names of all persons reported to it and all other information submitted to the department concerning those persons pursuant to 50-15-703.

History: En. Sec. 5, Ch. 354, L. 1981.

50-15-706. Rules. The department may adopt rules implementing this part, including:

(1) the types of tumors that are reportable; and

(2) the information on each patient having a reportable tumor that must be submitted to the department.

History: En. Sec. 6, Ch. 354, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-15-707 through 50-15-709 reserved.

50-15-710. Immunity from liability. A person other than the department may not be held liable in a civil or criminal action for complying with the reporting requirements of 50-15-703 or for lawfully using information provided by the tumor registry in a manner that does not violate the Tumor Registry Act.

History: En. Sec. 4, Ch. 101, L. 1997.

CHAPTER 16

HEALTH CARE INFORMATION

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50-16-101. Public officials and corporations to furnish information on request.
50-16-102. Information on infant morbidity and mortality.

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50-16-202. Committees to have access to information.
50-16-203. Committee information and proceedings confidential and privileged.
50-16-204. Restrictions on use or publication of information.
50-16-205. Data confidential — inadmissible in judicial proceedings.

Part 3 — Confidentiality of Health Care Information
(Repealed. Sec. 31, Ch. 632, L. 1987)

Part 4 — Health Information Center
(Repealed. Sec. 1, Ch. 66, L. 1987)

Part 5 — Uniform Health Care Information

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50-16-503. Uniformity of application and construction.
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Part 6 — Government Health Care Information

50-16-601. Short title.
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Part 7 — Report of Exposure to Infectious Disease

50-16-701. Definitions.
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50-16-703. Notification of precautions after exposure to infectious disease.
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Part 10 — AIDS Education and Prevention

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50-16-1002. Statement of purpose.
50-16-1003. Definitions.
50-16-1004. AIDS, HIV-related conditions, and HIV infection to be treated as other communicable diseases.
50-16-1005 and 50-16-1006 reserved.
50-16-1007. Testing — counseling — informed consent — penalty.
50-16-1008. Testing of donors of organs, tissues, and semen required — penalty.
50-16-1009. Confidentiality of records — notification of contacts — penalty for unlawful disclosure.
50-16-1010 through 50-16-1012 reserved.
50-16-1013. Civil remedy.

Chapter Cross-References

Public participation in governmental operations, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3.

Right of privacy, Art. II, sec. 10, Mont. Const.

Duty to report cases of communicable disease, 37-2-301.

Gunshot or stab wounds to be reported, 37-2-302.

Immunity from liability, 37-2-303.

Report to Department of Justice by physician, 37-2-311.

Physician's immunity from liability, 37-2-312.

Part 1

General Provisions

50-16-101. Public officials and corporations to furnish information on request. On request, employees and officers of firms and corporations and public officials shall furnish public health information to the department of public health and human services.

History: En. Sec. 14, Ch. 197, L. 1967; R.C.M. 1947, 69-4114; amd. Sec. 107, Ch. 418, L. 1995; amd. Sec. 284, Ch. 546, L. 1995.

50-16-102. Information on infant morbidity and mortality. (1) If information on infant morbidity and mortality will be used to reduce those problems, data relating to the condition and treatment of any person may be given to the department of public health and human services, Montana medical association, an allied society of the Montana medical association, a committee of a nationally organized medical society or research group, or an in-hospital staff committee.

(2) A person who furnishes information under subsection (1) is immune from suit for damages arising from the release of the data or publication of findings and conclusions based on the data.

(3) Data supplied under subsection (1) may be used or published only for advancing medical research or medical education in the interest of reducing infant morbidity or mortality. A summary of studies based on the data may be released for general publication.

(4) The identity of a person whose condition or treatment was studied is confidential and may not be revealed under any circumstances.

(5) Any data supplied or studies based on this data are privileged communications and may not be used as evidence in any legal proceeding. Any attempt to use or offer to supply the data or studies, without consent of the person treated or the person's legal representative, is prejudicial error resulting in a mistrial.

History: En. Sec. 15, Ch. 197, L. 1967; R.C.M. 1947, 69-4115; amd. Sec. 108, Ch. 418, L. 1995; amd. Sec. 285, Ch. 546, L. 1995.

Part 2

In-Hospital Medical Staff Committees

50-16-201. Data defined. As used in this part, "data" means written reports, notes, or records of tissue committees or other medical staff committees in connection with the professional training, supervision, or discipline of the medical staff of hospitals.

History: En. Sec. 4, Ch. 104, L. 1969; R.C.M. 1947, 69-6304.

50-16-202. Committees to have access to information. It is in the interest of public health and patient medical care that in-hospital medical staff committees have access to the records, information, and other data relating to the condition and treatment of patients in such hospital to study and evaluate for the purpose of evaluating matters relating to the care and treatment of such patients for research purposes and for the purpose of reducing morbidity or mortality and obtaining statistics and information relating to the prevention and treatment of diseases, illnesses, and injuries. To carry out such purposes, any hospital, its agents and employees may provide medical records, information, or other data relating to the condition and treatment of any patient in said hospital to any in-hospital medical staff committee.

History: En. Sec. 1, Ch. 104, L. 1969; R.C.M. 1947, 69-6301(part).

50-16-203. Committee information and proceedings confidential and privileged. All such records, data, and information shall be confidential and privileged to said committee and the members thereof, as though such hospital patients were the patients of the members of such committee. All proceedings and in-hospital records and reports of such medical staff committees shall be confidential and privileged.

History: En. Sec. 1, Ch. 104, L. 1969; R.C.M. 1947, 69-6301(part).

Cross-References

Doctor-patient privilege, 26-1-805.

Privileges, Rules 501 through 505, M.R.Ev. (see Title 26, ch. 10).

50-16-204. Restrictions on use or publication of information. Such in-hospital medical staff committees shall use or publish information from such material only for the purpose of evaluating matters of medical care, therapy, and treatment for research and statistical purposes. Neither such in-hospital medical staff committee nor the members, agents, or employees thereof shall disclose the name or identity of any patient whose records have been studied in any report or publication of findings and conclusions of such committee, but such in-hospital medical staff committee, its members, agents, or employees shall protect the identity of any patient whose condition or treatment has been studied and shall not disclose or reveal the name of any such in-hospital patient.

History: En. Sec. 2, Ch. 104, L. 1969; R.C.M. 1947, 69-6302.

50-16-205. Data confidential — inadmissible in judicial proceedings. All data shall be confidential and shall not be admissible in evidence in any judicial proceeding, but this section shall not affect the admissibility in evidence of records dealing with the patient's hospital care and treatment.

History: En. Sec. 3, Ch. 104, L. 1969; R.C.M. 1947, 69-6303.

Cross-References

Montana Rules of Evidence, Title 26, ch. 10.

Part 3

Confidentiality of Health Care Information

(Repealed. Sec. 31, Ch. 632, L. 1987)

Part Compiler's Comments

Histories of Repealed Sections:

50-16-301. En. Sec. 1, Ch. 578, L. 1979.

50-16-302. En. Sec. 2, Ch. 578, L. 1979.

50-16-303. En. Sec. 6, Ch. 578, L. 1979.
50-16-304. En. Sec. 8, Ch. 578, L. 1979.
50-16-305. En. Sec. 7, Ch. 578, L. 1979.
50-16-306 through 50-16-310 reserved.
50-16-311. En. Sec. 3, Ch. 578, L. 1979; amd. Sec. 1, Ch. 725, L. 1985.
50-16-312. En. Sec. 4, Ch. 578, L. 1979.
50-16-313. En. Sec. 4, Ch. 578, L. 1979.
50-16-314. En. Sec. 5, Ch. 578, L. 1979.

Part 4

Health Information Center (Repealed. Sec. 1, Ch. 66, L. 1987)

Part Compiler's Comments
Histories of Repealed Sections:
50-16-401. En. Sec. 1, Ch. 628, L. 1983.

Part 5

Uniform Health Care Information

Part Cross-References
Right of privacy guaranteed, Art. II, sec. 10, Mont. Const.

50-16-501. Short title. This part may be cited as the "Uniform Health Care Information Act".

History: En. Sec. 1, Ch. 632, L. 1987.

50-16-502. Legislative findings. The legislature finds that:

(1) health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy and health care or other interests;

(2) patients need access to their own health care information as a matter of fairness, to enable them to make informed decisions about their health care and to correct inaccurate or incomplete information about themselves;

(3) in order to retain the full trust and confidence of patients, health care providers have an interest in assuring that health care information is not improperly disclosed and in having clear and certain rules for the disclosure of health care information;

(4) persons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient's interest in the proper use and disclosure of his health care information survives even when the information is held by persons other than health care providers.

(5) the movement of patients and their health care information across state lines, access to and exchange of health care information from automated data banks, and the emergence of multistate health care providers creates a compelling need for uniform law, rules, and procedures governing the use and disclosure of health care information.

History: En. Sec. 2, Ch. 632, L. 1987.

50-16-503. Uniformity of application and construction. This part must be applied and construed to effectuate their general purpose to make uniform the laws with respect to the treatment of health care information among states enacting them.

History: En. Sec. 3, Ch. 632, L. 1987.

50-16-504. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Audit" means an assessment, evaluation, determination, or investigation of a health care provider by a person not employed by or affiliated with the provider, to determine compliance with:

(a) statutory, regulatory, fiscal, medical, or scientific standards;

(b) a private or public program of payments to a health care provider; or

(c) requirements for licensing, accreditation, or certification.

(2) "Directory information" means information disclosing the presence and the general health condition of a patient who is an inpatient in a health care facility or who is receiving emergency health care in a health care facility.

(3) "General health condition" means the patient's health status described in terms of critical, poor, fair, good, excellent, or terms denoting similar conditions.

(4) "Health care" means any care, service, or procedure provided by a health care provider, including medical or psychological diagnosis, treatment, evaluation, advice, or other services that affect the structure or any function of the human body.

(5) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(6) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and relates to the patient's health care. The term includes any record of disclosures of health care information.

(7) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession. The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.

(8) "Institutional review board" means a board, committee, or other group formally designated by an institution or authorized under federal or state law to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(9) "Maintain", as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

(10) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(11) "Peer review" means an evaluation of health care services by a committee of a state or local professional organization of health care providers or a committee of medical staff of a licensed health care facility. The committee must be:

(a) authorized by law to evaluate health care services; and

(b) governed by written bylaws approved by the governing board of the health care facility or an organization of health care providers.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

(13) "Reasonable fee" means the charge, as provided for in 50-16-540, for duplicating, searching for, or handling recorded health care information.

History: En. Sec. 4, Ch. 632, L. 1987; amd. Sec. 2, Ch. 300, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 300 inserted definition of reasonable fee. Amendment effective October 1, 1999.

Cross-References

Government health care information — definition of health care information, 50-16-602.

50-16-505 through 50-16-510 reserved.

50-16-511. Duty to adopt security safeguards. A health care provider shall effect reasonable safeguards for the security of all health care information it maintains.

History: En. Sec. 21, Ch. 632, L. 1987.

50-16-512. Content and dissemination of notice. (1) A health care provider who provides health care at a health care facility that the provider operates and who maintains a record of a patient's health care information shall create a notice of information practices, in substantially the following form:

NOTICE

"We keep a record of the health care services we provide for you. You may ask us to see and copy that record. You may also ask us to correct that record. We will not disclose your record to others unless you direct us to do so or unless the law authorizes or compels us to do so. You may see your record or get more information about it at ...."

(2) The health care provider shall post a copy of the notice of information practices in a conspicuous place in the health care facility and upon request provide patients or prospective patients with a copy of the notice.

History: En. Sec. 18, Ch. 632, L. 1987.

50-16-513. Retention of record. A health care provider shall maintain a record of existing health care information for at least 1 year following receipt of an authorization to disclose that health care information under 50-16-526 and during the pendency of a request for examination and copying under 50-16-541 or a request for correction or amendment under 50-16-543.

History: En. Sec. 22, Ch. 632, L. 1987.

Cross-References

Records and reports required of health care facilities — confidentiality, 50-5-106.

Maintenance and confidentiality of records concerning persons with developmental disabilities, 53-20-161.

50-16-514 through 50-16-520 reserved.

50-16-521. Health care representatives. (1) A person authorized to consent to health care for another may exercise the rights of that person under this part to the extent necessary to effectuate the terms or purposes of the grant of authority. If the patient is a minor and is authorized under 41-1-402 to consent to health care without parental consent, only the minor may exclusively exercise the rights of a patient under this part as to information pertaining to health care to which the minor lawfully consented.

(2) A person authorized to act for a patient shall act in good faith to represent the best interests of the patient.

History: En. Sec. 19, Ch. 632, L. 1987.

50-16-522. Representative of deceased patient. A personal representative of a deceased patient may exercise all of the deceased patient's rights under this part. If there is no personal representative or upon discharge of the personal representative, a deceased patient's rights under this part may be exercised by the surviving spouse, a parent, an adult child, an adult sibling, or any other person who is authorized by law to act for him.

History: En. Sec. 20, Ch. 632, L. 1987; amd. Sec. 1, Ch. 657, L. 1989.

50-16-523 and 50-16-524 reserved.

50-16-525. Disclosure by health care provider. (1) Except as authorized in 50-16-529, 50-16-530, and 50-19-402 or as otherwise specifically provided by law or the Montana Rules of Civil Procedure, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent or employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

(2) A health care provider shall maintain, in conjunction with a patient's recorded health care information, a record of each person who has received or examined, in whole or in part, the recorded health care information during the preceding 3 years, except for a person who has examined the recorded health care information under 50-16-529(1) or (2). The record of disclosure must include the name, address, and institutional affiliation, if any, of each person receiving or examining the recorded health care information, the date of the receipt or examination, and to the extent practicable a description of the information disclosed.

History: En. Sec. 5, Ch. 632, L. 1987; amd. Sec. 2, Ch. 657, L. 1989; amd. Sec. 8, Ch. 519, L. 1997.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Doctor-patient privilege, 26-1-805.

Privileges, Rules 501 through 505, M.R.Ev. (see Title 26, ch. 10).

Gunshot or stab wounds — reporting by health care practitioners, 37-2-302.

Release of information by physician concerning minor, 41-1-403.

Records and reports required of health care facilities — confidentiality, 50-5-106.

Confidentiality under Tumor Registry Act, 50-15-704.

Unauthorized divulgence of serological test information, 50-19-108.

Maintenance and confidentiality of records concerning persons with developmental disabilities, 53-20-161.

Confidentiality of records concerning mental illness, 53-21-166.

Records of chemically dependent persons, intoxicated persons, and family members, 53-24-306.

50-16-526. Patient authorization to health care provider for disclosure. (1) A patient may authorize a health care provider to disclose the patient's health care information. A health care provider shall honor an authorization and, if requested, provide a copy of the recorded health care information unless the health care provider denies the patient access to health care information under 50-16-542.

(2) A health care provider may charge a reasonable fee, not to exceed the fee provided for in 50-16-540, and is not required to honor an authorization until the fee is paid.

(3) To be valid, a disclosure authorization to a health care provider must:

(a) be in writing, dated, and signed by the patient;

(b) identify the nature of the information to be disclosed; and

(c) identify the person to whom the information is to be disclosed.

(4) Except as provided by this part, the signing of an authorization by a patient is not a waiver of any rights a patient has under other statutes, the Montana Rules of Evidence, or common law.

History: En. Sec. 6, Ch. 632, L. 1987; amd. Sec. 3, Ch. 300, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 300 in (2) substituted "the fee provided for in 50-16-540" for "his actual cost for providing the health care information". Amendment effective October 1, 1999.

Cross-References

Privileges, Rules 501 through 505, M.R.Ev. (see Title 26, ch. 10).

50-16-527. Patient authorization — retention — effective period — exception. (1) A health care provider shall retain each authorization or revocation in conjunction with any health care information from which disclosures are made.

(2) Except for authorizations to provide information to third-party health care payors, an authorization may not permit the release of health care information relating to health care that the patient receives more than 6 months after the authorization was signed.

(3) Health care information disclosed under an authorization is otherwise subject to this part. An authorization becomes invalid after the expiration date contained in the authorization, which may not exceed 30 months. If the authorization does not contain an expiration date, it expires 6 months after it is signed.

(4) Notwithstanding subsections (2) and (3), a signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, by the health care provider. The disclosure authorized by this subsection authorizes the physician or other health care provider to disclose or release only information relevant to the claimant's condition. Health care information relevant to the claimant's condition may include past history of the complaints of or the treatment of a condition that is similar to that presented in the claim, conditions for which benefits are subsequently claimed, other conditions related to the same body part, or conditions that may affect recovery. A release of information related to workers' compensation must be consistent with the provisions of this subsection. Authorization under this section is effective only as long as the claimant is claiming benefits. This subsection may not be construed to restrict the scope of discovery or disclosure of health care information as allowed under the Montana Rules of Civil Procedure, by the workers' compensation court, or as otherwise provided by law.

History: En. Sec. 7, Ch. 632, L. 1987; amd. Sec. 13, Ch. 333, L. 1989; amd. Sec. 1, Ch. 480, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 480 in (3) deleted former first sentence that read: "An authorization in effect on October 1, 1987, remains valid for 30 months after October 1, 1987, unless an earlier date is specified or it is revoked under 50-16-528" and in second sentence at beginning after "An authorization" deleted "written after October 1, 1987"; in (4) near middle of second sentence after "subsection" substituted "authorizes the physician or other health care provider to disclose or release only" for "relates only to", inserted third and fourth sentences outlining relevant health care information, and inserted sixth sentence limiting applicability of the subsection with regard to discovery or disclosure of health care information allowed by law; and made minor changes in style. Amendment effective April 27, 1999.

50-16-528. Patient's revocation of authorization for disclosure. A patient may revoke a disclosure authorization to a health care provider at any time unless disclosure is required to effectuate payments for health care that has been provided or other substantial action has been taken in reliance on the authorization. A patient may not maintain an action against the health care provider for disclosures made in good faith reliance on an authorization if the health care provider had no notice of the revocation of the authorization.

History: En. Sec. 8, Ch. 632, L. 1987.

50-16-529. Disclosure without patient's authorization based on need to know. A health care provider may disclose health care information about a patient without the patient's authorization, to the extent a recipient needs to know the information, if the disclosure is:

(1) to a person who is providing health care to the patient;

(2) to any other person who requires health care information for health care education; to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services to the health care provider; for assisting the health care provider in the delivery of health care; or to a third-party health care payor who requires health care information and if the health care provider reasonably believes that the person will:

(a) not use or disclose the health care information for any other purpose; and

(b) take appropriate steps to protect the health care information;

(3) to any other health care provider who has previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider not to make the disclosure;

(4) to immediate family members of the patient or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with the laws of the state and good medical or other professional practice, unless the patient has instructed the health care provider not to make the disclosure;

(5) to a health care provider who is the successor in interest to the health care provider maintaining the health care information;

(6) for use in a research project that an institutional review board has determined:

(a) is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(b) is impracticable without the use or disclosure of the health care information in individually identifiable form;

(c) contains reasonable safeguards to protect the information from improper disclosure;

(d) contains reasonable safeguards to protect against directly or indirectly identifying any patient in any report of the research project; and

(e) contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

(7) to a person who obtains information for purposes of an audit, if that person agrees in writing to:

(a) remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(b) not disclose the information further, except to accomplish the audit or to report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient or other unlawful conduct by a health care provider;

(8) to an official of a penal or other custodial institution in which the patient is detained; and

(9) to any contact, as defined in 50-16-1003, if the health care provider reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the contact or any other individual.

History: En. Sec. 9, Ch. 632, L. 1987; amd. Sec. 3, Ch. 657, L. 1989; amd. Sec. 6, Ch. 544, L. 1991.

Cross-References

Duty of mental health professionals to warn of violent patients, 27-1-1102.

Nonliability for peer review, 37-2-201.

Pharmacists not liable for peer review, 37-7-1101.

Release of information by physician concerning minor, 41-1-403.

Maintenance and confidentiality of records concerning persons with developmental disabilities, 53-20-161.

Confidentiality of records concerning mental illness, 53-21-166.

50-16-530. Disclosure without patient's authorization — other bases. A health care provider may disclose health care information about a patient without the patient's authorization if the disclosure is:

(1) directory information, unless the patient has instructed the health care provider not to make the disclosure;

(2) to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information or when needed to protect the public health;

(3) to federal, state, or local law enforcement authorities to the extent required by law;

(4) to a law enforcement officer about the general physical condition of a patient being treated in a health care facility if the patient was injured on a public roadway or was injured by the possible criminal act of another;

(5) in response to a request of the division of crime control for information under 53-9-104(2)(b);

(6) pursuant to compulsory process in accordance with 50-16-535 and 50-16-536; or

(7) pursuant to 50-16-712.

History: En. Sec. 10, Ch. 632, L. 1987; amd. Sec. 1, Ch. 68, L. 1989; amd. Sec. 2, Ch. 396, L. 1995.

50-16-531. Immunity of health care providers pursuant to written authorization — form required. A health care provider who discloses health care information within the possession of the provider, including health care information from another provider, is immune from any civil cause of action by the patient or the patient's heirs or successors in interest that is based upon delivery to the patient or the patient's designee of health care information concerning the patient that is contained in the health care provider's patient file if the information is disclosed in accordance with a written authorization using the following language:

"All health care information in your possession, whether generated by you or by any other source, may be released to me or to ______________(named person) for ______________(purpose of the disclosure). This release is subject to revocation at any time. The revocation is effective from the time it is communicated to the health care provider. If not revoked, the release terminates in accordance with 50-16-527.

....
(Signature of patient)"

History: En. Sec. 1, Ch. 469, L. 1993.

50-16-532 through 50-16-534 reserved.

50-16-535. When health care information available by compulsory process. (1) Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

(a) the patient has consented in writing to the release of the health care information in response to compulsory process or a discovery request;

(b) the patient has waived the right to claim confidentiality for the health care information sought;

(c) the patient is a party to the proceeding and has placed his physical or mental condition in issue;

(d) the patient's physical or mental condition is relevant to the execution or witnessing of a will or other document;

(e) the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;

(f) a patient's health care information is to be used in the patient's commitment proceeding;

(g) the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so obtained may not be used in any proceeding against the patient unless the matter relates to payment for his health care or unless authorized under subsection (1)(i);

(h) the health care information is relevant to a proceeding brought under 50-16-551 through 50-16-553;

(i) a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest; or

(j) the health care information is requested pursuant to an investigative subpoena issued under 46-4-301.

(2) Nothing in this part authorizes the disclosure of health care information by compulsory legal process or discovery in any judicial, legislative, or administrative proceeding where disclosure is otherwise prohibited by law.

History: En. Sec. 11, Ch. 632, L. 1987; amd. Sec. 4, Ch. 657, L. 1989.

Cross-References

Government health care information — legal proceedings, 50-16-605.

50-16-536. Method of compulsory process. (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under 50-16-535(1)(b), (1)(d), or (1)(e) or in a civil proceeding or investigation under 50-16-535(1)(i), the person seeking discovery or compulsory process shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or by the person's authorized representative, identifying at least one subsection of 50-16-535 under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under 50-16-535(1)(b), (1)(d), or (1)(e) or in a civil proceeding under 50-16-535(1)(i), that the requirements of subsection (1) for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of 50-16-535 identified in the certification provides an appropriate basis for the use of discovery or compulsory process. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

(3) In response to service of compulsory process or discovery requests, where authorized by law, a health care provider may deny access to the requested health care information. Additionally, a health care provider may deny access to the requested health care information under 50-16-542(1). If access to requested health care information is denied by the health care provider under 50-16-542(1), the health care provider shall submit to the court by affidavit or other reasonable means an explanation of why the health care provider believes the information should be protected from disclosure.

(4) When access to health care information is denied under 50-16-542(1), the court may order disclosure of health care information, with or without restrictions as to its use, as the court considers necessary. In deciding whether to order disclosure, the court shall consider the explanation submitted by the health care provider, the reasons for denying access to health care information set forth in 50-16-542(1), and any arguments presented by interested parties.

(5) A health care provider required to disclose health care information pursuant to compulsory process may charge a reasonable fee, not to exceed the fee provided for in 50-16-540, and may deny examination or copying of the information until the fee is paid.

(6) Production of health care information under 50-16-535 and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure.

History: **En. Sec. 12, Ch. 632, L. 1987; amd. Sec. 5, Ch. 657, L. 1989; amd. Sec. 44, Ch. 16, L. 1991; amd. Sec. 4, Ch. 300, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 300 in (5) substituted "the fee provided for in 50-16-540" for "the health care provider's actual cost for providing the information"; and made minor changes in style. Amendment effective October 1, 1999.

50-16-537 through 50-16-539 reserved.

50-16-540. Reasonable fees allowed. A reasonable fee for providing health care information may not exceed 50 cents for each page for a paper copy or photocopy. A reasonable fee may include an administrative fee that may not exceed $15 for searching and handling recorded health care information.

History: **En. Sec. 1, Ch. 300, L. 1999.**

Compiler's Comments

Effective Date: This section was effective October 1, 1999.

50-16-541. Requirements and procedures for patient's examination and copying. (1) Upon receipt of a written request from a patient to examine or copy all or part of the patient's recorded health care information, a health care provider, as promptly as required under the circumstances but no later than 10 days after receiving the request, shall:

(a) make the information available to the patient for examination, without charge, during regular business hours or provide a copy, if requested, to the patient;

(b) inform the patient if the information does not exist or cannot be found;

(c) if the health care provider does not maintain a record of the information, inform the patient and provide the name and address, if known, of the health care provider who maintains the record;

(d) if the information is in use or unusual circumstances have delayed handling the request, inform the patient and specify in writing the reasons for the delay and the earliest date, not later than 21 days after receiving the request, when the information will be available for examination or copying or when the request will be otherwise disposed of; or

(e) deny the request in whole or in part under 50-16-542 and inform the patient.

(2) Upon request, the health care provider shall provide an explanation of any code or abbreviation used in the health care information. If a record of the particular health care information requested is not maintained by the health care provider in the requested form, the health care provider is not required to create a new record or reformulate an existing record to make the information available in the requested form. The health care provider may charge a reasonable fee for each request, not to exceed the fee provided for in 50-16-540, for providing the health care information and is not required to provide copies until the fee is paid.

History: **En. Sec. 13, Ch. 632, L. 1987; amd. Sec. 5, Ch. 300, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 300 in (1)(a) after "examination" inserted "without charge"; in last sentence of (2) after "fee" inserted "for each request", substituted "the fee provided for in 50-16-540" for "the health care provider's actual cost", and near end substituted "provide copies" for "permit examination or copying"; and made minor changes in style. Amendment effective October 1, 1999.

50-16-542. Denial of examination and copying. (1) A health care provider may deny access to health care information by a patient if the health care provider reasonably concludes that:

(a) knowledge of the health care information would be injurious to the health of the patient;

(b) knowledge of the health care information could reasonably be expected to lead to the patient's identification of an individual who provided the information in confidence and under circumstances in which confidentiality was appropriate;

(c) knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;

(d) the health care information was compiled and is used solely for litigation, quality assurance, peer review, or administrative purposes;

(e) the health care information might contain information protected from disclosure pursuant to 50-15-121 and 50-15-122;

(f) the health care provider obtained the information from a person other than the patient; or

(g) access to the health care information is otherwise prohibited by law.

(2) Except as provided in 50-16-521, a health care provider may deny access to health care information by a patient who is a minor if:

(a) the patient is committed to a mental health facility; or

(b) the patient's parents or guardian has not authorized the health care provider to disclose the patient's health care information.

(3) If a health care provider denies a request for examination and copying under this section, the provider, to the extent possible, shall segregate health care information for which access has been denied under subsection (1) from information for which access cannot be denied and permit the patient to examine or copy the information subject to disclosure.

(4) If a health care provider denies a patient's request for examination and copying, in whole or in part, under subsection (1)(a) or (1)(c), the provider shall permit examination and copying of the record by the patient's spouse, adult child, or parent or guardian or by another health care provider who is providing health care services to the patient for the same condition as the health care provider denying the request. The health care provider denying the request shall inform the patient of the patient's right to select another health care provider under this subsection.

History: En. Sec. 14, Ch. 632, L. 1987; amd. Sec. 6, Ch. 657, L. 1989; amd. Sec. 19, Ch. 515, L. 1995.

50-16-543. Request for correction or amendment. (1) For purposes of accuracy or completeness, a patient may request in writing that a health care provider correct or amend its record of the patient's health care information to which he has access under 50-16-541.

(2) As promptly as required under the circumstances but no later than 10 days after receiving a request from a patient to correct or amend its record of the patient's health care information, the health care provider shall:

(a) make the requested correction or amendment and inform the patient of the action and of the patient's right to have the correction or amendment sent to previous recipients of the health care information in question;

(b) inform the patient if the record no longer exists or cannot be found;

(c) if the health care provider does not maintain the record, inform the patient and provide him with the name and address, if known, of the person who maintains the record;

(d) if the record is in use or unusual circumstances have delayed the handling of the correction or amendment request, inform the patient and specify in writing the earliest date, not later than 21 days after receiving the request, when the correction or amendment will be made or when the request will otherwise be disposed of; or

(e) inform the patient in writing of the provider's refusal to correct or amend the record as requested, the reason for the refusal, and the patient's right to add a statement of disagreement and to have that statement sent to previous recipients of the disputed health care information.

History: En. Sec. 15, Ch. 632, L. 1987.

50-16-544. Procedure for adding correction, amendment, or statement of disagreement. (1) In making a correction or amendment, the health care provider shall:

(a) add the amending information as a part of the health record; and

(b) mark the challenged entries as corrected or amended entries and indicate the place in the record where the corrected or amended information is located, in a manner practicable under the circumstances.

(2) If the health care provider maintaining the record of the patient's health care information refuses to make the patient's proposed correction or amendment, the provider shall:

(a) permit the patient to file as a part of the record of his health care information a concise statement of the correction or amendment requested and the reasons therefor; and

(b) mark the challenged entry to indicate that the patient claims the entry is inaccurate or incomplete and indicate the place in the record where the statement of disagreement is located, in a manner practicable under the circumstances.

History: En. Sec. 16, Ch. 632, L. 1987.

50-16-545. Dissemination of corrected or amended information or statement of disagreement. (1) A health care provider, upon request of a patient, shall take reasonable steps to provide copies of corrected or amended information or of a statement of disagreement to all persons designated by the patient and identified in the health care information as having examined or received copies of the information sought to be corrected or amended.

(2) A health care provider may charge the patient a reasonable fee, not exceeding the fee provided for in 50-16-540, for distributing corrected or amended information or the statement of disagreement, unless the provider's error necessitated the correction or amendment.

History: En. Sec. 17, Ch. 632, L. 1987; amd. Sec. 6, Ch. 300, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 300 in (2) substituted "the fee provided for in 50-16-540" for "the provider's actual cost". Amendment effective October 1, 1999.

50-16-546 through 50-16-550 reserved.

50-16-551. Criminal penalty. (1) A person who by means of bribery, theft, or misrepresentation of identity, purpose of use, or entitlement to the information examines or obtains, in violation of this part, health care information maintained by a health care provider is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding $10,000 or imprisonment for a period not exceeding 1 year, or both.

(2) A person who, knowing that a certification under 50-16-536(2) or a disclosure authorization under 50-16-526 and 50-16-527 is false, purposely presents the certification or disclosure authorization to a health care provider is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding $10,000 or imprisonment for a period not exceeding 1 year, or both.

History: **En. Sec. 23, Ch. 632, L. 1987.**

Cross-References

Government health care information — penalty, 50-16-611.

Unauthorized divulgence of serological test information, 50-19-108.

50-16-552. Civil enforcement. The attorney general or appropriate county attorney may maintain a civil action to enforce this part. The court may order any relief authorized by 50-16-553.

History: **En. Sec. 24, Ch. 632, L. 1987.**

50-16-553. Civil remedies. (1) A person aggrieved by a violation of this part may maintain an action for relief as provided in this section.

(2) The court may order the health care provider or other person to comply with this part and may order any other appropriate relief.

(3) A health care provider who relies in good faith upon a certification pursuant to 50-16-536(2) is not liable for disclosures made in reliance on that certification.

(4) No disciplinary or punitive action may be taken against a health care provider or his employee or agent who brings evidence of a violation of this part to the attention of the patient or an appropriate authority.

(5) In an action by a patient alleging that health care information was improperly withheld under 50-16-541 and 50-16-542, the burden of proof is on the health care provider to establish that the information was properly withheld.

(6) If the court determines that there is a violation of this part, the aggrieved person is entitled to recover damages for pecuniary losses sustained as a result of the violation and, in addition, if the violation results from willful or grossly negligent conduct, the aggrieved person may recover not in excess of $5,000, exclusive of any pecuniary loss.

(7) If a plaintiff prevails, the court may assess reasonable attorney fees and all other expenses reasonably incurred in the litigation.

(8) An action under this part is barred unless the action is commenced within 3 years after the cause of action accrues.

History: **En. Sec. 25, Ch. 632, L. 1987.**

Part 6

Government Health Care Information

Part Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

50-16-601. Short title. This part may be cited as the "Government Health Care Information Act".

History: En. Sec. 1, Ch. 481, L. 1989.

50-16-602. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) (a) "Health care information" means information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of an individual, including one who is deceased, and that relates to that individual's health care or status. The term includes any record of disclosures of health care information and any information about an individual received pursuant to state law or rules relating to communicable disease.

(b) The term does not include vital statistics information gathered under Title 50, chapter 15.

(3) "Local board" means a county, city, city-county, or district board of health provided for in Title 50, chapter 2, part 1.

(4) "Local health officer" means a county, city, city-county, or district health officer appointed by a local board.

History: En. Sec. 2, Ch. 481, L. 1989; amd. Sec. 109, Ch. 418, L. 1995; amd. Sec. 286, Ch. 546, L. 1995.

Cross-References

Uniform health care information — definition of health care information, 50-16-504.

50-16-603. Confidentiality of health care information. Health care information in the possession of the department, a local board, a local health officer, or their authorized representatives may not be released except:

(1) for statistical purposes, if no identification of individuals can be made from the information released;

(2) when the health care information pertains to a person who has given written consent to the release and has specified the type of information to be released and the person or entity to whom it may be released;

(3) to medical personnel in a medical emergency as necessary to protect the health, life, or well-being of the named person;

(4) as allowed by Title 50, chapters 17 and 18;

(5) to another state or local public health agency, including those in other states, whenever necessary to continue health services to the named person or to undertake public health efforts to prevent or interrupt the transmission of a communicable disease;

(6) in the case of a minor, as required by 41-3-201 or pursuant to an investigation under 41-3-202. If the health care information is required in a subsequent court proceeding involving child abuse, the information may be disclosed only in camera and documents containing the information must be sealed by the court upon conclusion of the proceedings.

(7) to medical personnel, the department, a local health officer or board, or a district court when necessary to implement or enforce state statutes or state or local health rules concerning the prevention or control of diseases

designated as reportable pursuant to 50-1-202, if the release does not conflict with any other provision contained in this part.

History: **En. Sec. 3, Ch. 481, L. 1989.**

Cross-References

Uniform health care information, Title 50, ch. 16, part 5.

50-16-604. Secondary release of health care information. Information released pursuant to 50-16-603 may not be released by the person or entity it is released to unless the release conforms to the requirements of 50-16-603.

History: **En. Sec. 4, Ch. 481, L. 1989.**

50-16-605. Judicial, legislative, and administrative proceedings — testimony. (1) An officer or employee of the department may not be examined in a judicial, legislative, administrative, or other proceeding about the existence or content of records containing individually identifiable health care information, including the results of investigations, unless all individuals whose names appear in the records give written consent to the release of information identifying them.

(2) Subsection (1) does not apply if the health care information is to be released pursuant to 50-16-603(7).

History: **En. Sec. 5, Ch. 481, L. 1989.**

Cross-References

Uniform health care information — when available by compulsory process, 50-16-535.

50-16-606. Correlation with Uniform Health Care Information Act. Health care information in the possession of a local board, local health officer, or the department because a health care provider employed by any of these entities provided health care to a patient, either individually or at a public health center or other publicly owned health care facility, is subject to the Uniform Health Care Information Act and not subject to this part.

History: **En. Sec. 1, Ch. 432, L. 1991.**

Cross-References

Uniform Health Care Information Act, Title 50, ch. 16, part 5.

50-16-607 through 50-16-610 reserved.

50-16-611. Penalty. A person who knowingly violates the provisions of this part is guilty of a misdemeanor and upon conviction shall be fined not less than $500 or more than $10,000, be imprisoned in the county jail not less than 3 months or more than 1 year, or both.

History: **En. Sec. 6, Ch. 481, L. 1989.**

Cross-References

Uniform health care information — criminal penalty, 50-16-551.

Part 7
Report of Exposure to Infectious Disease

Part Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Duty to report cases of communicable disease, 37-2-301.

Duty to report cases of sexually transmitted diseases, 50-18-106.

50-16-701. Definitions. As used in this part, the following definitions apply:

(1) "Airborne infectious disease" means an infectious disease transmitted from person to person by an aerosol, including but not limited to infectious tuberculosis.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Designated officer" means the emergency services organization's representative and the alternate whose names are on record with the department as the persons responsible for notifying an emergency services provider of exposure.

(4) "Emergency services organization" means a public or private organization that provides emergency services to the public.

(5) "Emergency services provider" means a person employed by or acting as a volunteer with an emergency services organization, including but not limited to a law enforcement officer, firefighter, emergency medical technician, paramedic, corrections officer, or ambulance service attendant.

(6) "Exposure" means the subjecting of a person to a risk of transmission of an infectious disease through the commingling of the blood or bodily fluids of the person and a patient or in another manner as defined by department rule.

(7) "Health care facility" has the meaning provided in 50-5-101 and includes a public health center as defined in 7-34-2102.

(8) "Infectious disease" means human immunodeficiency virus infection, hepatitis B, hepatitis C, hepatitis D, communicable pulmonary tuberculosis, meningococcal meningitis, and any other disease capable of being transmitted through an exposure that has been designated by department rule.

(9) "Infectious disease control officer" means the person designated by the health care facility as the person who is responsible for notifying the emergency services provider's designated officer and the department of an infectious disease as provided for in this part and by rule.

(10) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

History: En. Sec. 1, Ch. 390, L. 1989; amd. Sec. 1, Ch. 476, L. 1993; amd. Sec. 110, Ch. 418, L. 1995; amd. Sec. 287, Ch. 546, L. 1995; amd. Sec. 13, Ch. 93, L. 1997; amd. Sec. 1, Ch. 146, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 146 inserted definition of emergency services organization; in definition of emergency services provider substituted "an emergency services organization" for "a public or private organization that provides emergency services to the public"; in definition of infectious disease after "means" deleted "a communicable disease transmittable through an exposure, including the diseases of", after "virus" inserted "infection", and after "other" substituted "disease capable of being transmitted through an exposure that has been" for "diseases that may be"; in definition of infectious disease control officer near end substituted "part" for

"chapter"; and made minor changes in style.
Amendment effective October 1, 1999.

50-16-702. Notification of exposure to infectious disease — report of exposure to disease. (1) (a) If an emergency services provider acting in an official capacity attends a patient prior to or during transport or assists in transporting a patient to a health care facility and the emergency services provider has had an exposure, the emergency services provider may request the designated officer to submit the form required by department rule to the health care facility on the emergency services provider's behalf. The form must be provided for in rules adopted by the department and must include the emergency services provider's name and other information required by the department, including a description of the exposure. The designated officer shall submit the completed form to the health care facility receiving the patient as soon as possible after the request for submission by the emergency services provider. Submission of the form to the health care facility is an indication that the emergency services provider was exposed and a verification that the designated officer and the emergency services provider believe that the emergency services provider was exposed.

(b) If the exposure described on the form occurred in a manner that may allow infection by HIV, as defined in 50-16-1003, by a mode of transmission recognized by the centers for disease control and prevention, then submission of the form to the health care facility constitutes a request to the patient's physician to seek consent for performance of an HIV-related test pursuant to 50-16-1007(10).

(c) Upon receipt of the report of exposure from a designated officer, the health care facility shall notify the designated officer in writing whether or not a determination has been made that the patient has or does not have an infectious disease. If a determination has been made and the patient has been found:

(i) to have an infectious disease, the information required by 50-16-703 must be provided by the health care facility;

(ii) to not have an infectious disease, the date on which the patient was transported to the health care facility must be provided by the health care facility.

(2) If a health care facility receiving a patient determines that the patient has an airborne infectious disease, the health care facility shall, within 48 hours after the determination was made, notify the designated officer and the department of that fact. The notice to the department must include the name of the emergency services organization that transported the patient to the health care facility. The department shall, within 24 hours after receiving the notice, notify the designated officer of the emergency services provider who transported the patient.

(3) A designated officer who receives the notification from a health care facility required by 50-16-703(2) or by subsection (1)(c) of this section shall immediately provide the information contained in the notification to the emergency services provider for whom the report of exposure was filed or who was exposed to a patient with an airborne infectious disease.

History: En. Sec. 2, Ch. 390, L. 1989; amd. Sec. 7, Ch. 544, L. 1991; amd. Sec. 2, Ch. 476, L. 1993; amd. Sec. 2, Ch. 146, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 146 in (1)(a) at end of third sentence substituted "completed form to the health care facility receiving the patient as soon as possible after the request for submission by the emergency services provider" for "form verifying that there was an exposure" and inserted fourth sentence concerning indication of exposure and verification; in (1)(b) after "control" inserted "and prevention"; in (1)(c) after "receipt of" substituted "the report of exposure" for "a request" and after "writing" substituted remainder of subsection concerning possible determinations for former text and subsection (1)(d) that read: "(i) whether or not the patient was infected with an infectious disease;

(ii) whether or not a determination has been made; and

(iii) the name of the disease and the date of transport if the patient was infected.

(d) The designated officer shall then notify the emergency services provider"; in (2) inserted second sentence concerning notice and in third sentence after "hours" inserted "after receiving the notice"; inserted (3) concerning providing information to emergency services provider; and made minor changes in style. Amendment effective October 1, 1999.

50-16-703. Notification of precautions after exposure to infectious disease. (1) After a patient is transported to a health care facility and if a physician determines that the transported patient has an infectious disease, the physician shall inform the infectious disease control officer of the health care facility of the determination within 24 hours after the determination is made.

(2) If it is determined that the infectious disease is airborne or a report of exposure was filed concerning the patient under 50-16-702, the health care facility shall provide the notification required by subsection (3) orally within 48 hours after the time of diagnosis and in writing within 72 hours after diagnosis to the designated officer of each emergency services organization known to the health care facility to have provided emergency services to the patient prior to or during transportation to the health care facility.

(3) The notification must state the disease to which the emergency services provider was exposed, the appropriate medical precautions and treatment that the exposed person needs to take, the date on which the patient was transported to the health care facility, and the time that the patient arrived at the facility.

History: En. Sec. 3, Ch. 390, L. 1989; amd. Sec. 3, Ch. 476, L. 1993; amd. Sec. 3, Ch. 146, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 146 in (1) near beginning after "facility" deleted "a physician shall inform the health care facility within 24 hours" and at end after "disease" inserted "the physician shall inform the infectious disease control officer of the health care facility of the determination within 24 hours after the determination is made"; at beginning of (2) inserted "If it is determined that the infectious disease is airborne or a report of exposure was filed concerning the patient under 50-16-702", after "facility shall" substituted "provide the notification required by subsection (3) orally" for "orally notify", and after "emergency services" substituted "organization known to the health care facility to have provided emergency services to the patient prior to or during transportation to the health care facility" for "provider who attended the patient prior to or during transport or who transported the patient with the infectious disease"; at end of (3) inserted "the date on which the patient was transported to the health care facility, and the time that the patient arrived at the facility"; and made minor changes in style. Amendment effective October 1, 1999.

50-16-704. Confidentiality — penalty for violation — immunity from liability. (1) The name of the person diagnosed as having an infectious disease may not be released to anyone, including the emergency services provider who was exposed, nor may the name of the emergency services provider who was exposed be released to anyone other than the emergency services provider, except as required by this part, by department rule concerning reporting of communicable disease, or as allowed by Title 50, chapter 16, part 5.

(2) A person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be fined not less than $500 or more than $10,000, be imprisoned in the county jail not less than 3 months or more than 1 year, or both.

(3) A health care facility, a representative of a health care facility, a physician, or the designated officer of an emergency services provider's organization may not be held jointly or severally liable for providing the notification required by 50-16-703 when the notification is made in good faith or for failing to provide the notification if good faith attempts to contact an exposed person of exposure are unsuccessful.

History: En. Sec. 5, Ch. 390, L. 1989; amd. Sec. 4, Ch. 476, L. 1993; amd. Sec. 4, Ch. 146, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 146 in (1) near beginning after "person" deleted "who suffered the exposure and the person", after "exposed" inserted "nor may the name of the emergency services provider who was exposed be released to anyone other than the emergency services provider", and after "required by" inserted "this part"; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Physician's immunity from liability, 37-2-312.

50-16-705. Rulemaking authority. The department shall adopt rules to:

(1) define what constitutes an exposure to an infectious disease;

(2) specify the infectious diseases subject to this part;

(3) specify the information about an exposure that must be included in a report of exposure;

(4) specify recommended medical precautions and treatment for each infectious disease subject to this part; and

(5) specify recordkeeping and reporting requirements necessary to ensure compliance with the notification requirements of this part.

History: En. Sec. 4, Ch. 390, L. 1989; amd. Sec. 5, Ch. 476, L. 1993; amd. Sec. 5, Ch. 146, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 146 inserted (5) concerning recordkeeping and reporting rules; and made minor changes in style. Amendment effective March 23, 1999.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-16-706 through 50-16-710 reserved.

50-16-711. Health care facility and emergency services organization responsibilities for tracking exposure to infectious disease. (1) The health care facility and the emergency services organization shall develop internal procedures for implementing the provisions of this part and department rules.

(2) The health care facility must have available at all times a person to receive the form provided for in 50-16-702 containing a report of exposure to infectious disease.

(3) The health care facility shall designate an infectious disease control officer and an alternate who will be responsible for maintaining the required records and notifying designated officers in accordance with the provisions of

this part and the rules promulgated under this part and shall provide the names of the designated officer and the alternate to the department.

(4) The emergency services organization shall name a designated officer and an alternate and shall provide their names to the department.

History: En. Sec. 7, Ch. 476, L. 1993; amd. Sec. 6, Ch. 146, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 146 in (1) substituted "this part" for "this chapter"; at end of (3) substituted "this part and the rules promulgated under this part and shall provide the names of the designated officer and the alternate to the department" for "this chapter and the rules promulgated under this chapter"; in (4) at end inserted "and shall provide their names to the department"; and made minor changes in style. Amendment effective October 1, 1999.

50-16-712. Notification to mortuary personnel — exposure to infectious disease. (1) A coroner, a health care facility, or a health care provider, as defined in 50-16-1003, shall disclose information regarding the status of a deceased individual with regard to an infectious disease to personnel from a mortuary licensed under Title 37, chapter 19, at the time of transfer of the dead body or as soon after transfer as possible. The information must include whether the individual had an infectious disease at the time of death and the nature of the infectious disease.

(2) The mortuary personnel who receive the information provided in subsection (1) may not disclose the information except for purposes related directly to the preparation and disposition of the dead body.

History: En. Sec. 1, Ch. 396, L. 1995.

Parts 8 and 9 reserved

Part 10

AIDS Education and Prevention

Part Cross-References

Right of privacy guaranteed, Art. II, sec. 10, Mont. Const.

Uniform health care information, Title 50, ch. 16, part 5.

50-16-1001. Short title. This part may be cited as the "AIDS Prevention Act".

History: En. Sec. 1, Ch. 614, L. 1989.

50-16-1002. Statement of purpose. (1) The legislature recognizes that the epidemic of human immunodeficiency virus (HIV) infection, the causative agent of acquired immune deficiency syndrome (AIDS), and related medical conditions constitutes a serious danger to the public health and welfare. In the absence of a vaccine or a cure and because of the sexual and intravenous drug use behaviors by which the virus is predominately spread, control of the epidemic is dependent on the education of those infected or at risk for infection.

(2) It is the intent of the legislature that education directed at preventing the transmission of HIV be provided to those infected and at risk of infection and to entreat such persons to come forward to determine their HIV infection status and to obtain appropriate education.

History: En. Sec. 2, Ch. 614, L. 1989.

50-16-1003. Definitions. As used in this part, the following definitions apply:

(1) "AIDS" means acquired immune deficiency syndrome as further defined by the department in accordance with standards promulgated by the centers for disease control of the United States public health service.

(2) "Contact" means a person who has been exposed to the test subject in a manner, voluntary or involuntary, that may allow HIV transmission in accordance with modes of transmission recognized by the centers for disease control of the United States public health service.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Health care facility" means a health care institution, private or public, including but not limited to a hospital, nursing home, clinic, blood bank, blood center, sperm bank, or laboratory.

(5) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state or who is licensed, certified, or otherwise authorized by the laws of another state to provide health care in the ordinary course of business or practice of a profession. The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.

(6) "HIV" means the human immunodeficiency virus, identified as the causative agent of AIDS, and all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological systems and leave the infected person immunodeficient or neurologically impaired.

(7) "HIV-related condition" means a chronic disease resulting from infection with HIV, including but not limited to AIDS and asymptomatic seropositivity for HIV.

(8) "HIV-related test" means a test approved by the federal food and drug administration, including but not limited to an enzyme immunoassay and a western blot, that is designed to detect the presence of HIV or antibodies to HIV.

(9) "Informed consent" means a freely executed oral or written grant of permission by the subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject of the test is unconscious or otherwise mentally incapacitated, by the subject's next of kin or significant other or a person designated by the subject in hospital records to act on the person's behalf to perform an HIV-related test after the receipt of pretest counseling.

(10) "Legal guardian" means a person appointed by a court to assume legal authority for another who has been found incapacitated or, in the case of a minor, a person who has legal custody of the minor.

(11) "Local board" means a county, city, city-county, or district board of health.

(12) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

(13) "Next of kin" means an individual who is a parent, adult child, grandparent, adult sibling, or legal spouse of a person.

(14) "Person" means an individual, corporation, organization, or other legal entity.

(15) "Posttest counseling" means counseling, conducted at the time that the HIV-related test results are given, and includes, at a minimum, written materials provided by the department.

(16) "Pretest counseling" means the provision of counseling to the subject prior to conduct of an HIV-related test, including, at a minimum, written materials developed and provided by the department.

(17) "Release of test results" means a written authorization for disclosure of HIV-related test results that:

(a) is signed and dated by the person tested or the person authorized to act for the person tested; and

(b) specifies the nature of the information to be disclosed and to whom disclosure is authorized.

(18) "Significant other" means an individual living in a current spousal relationship with another individual but who is not legally a spouse of that individual.

History: En. Sec. 3, Ch. 614, L. 1989; amd. Sec. 1, Ch. 544, L. 1991; amd. Sec. 111, Ch. 418, L. 1995; amd. Sec. 288, Ch. 546, L. 1995; amd. Sec. 1, Ch. 197, L. 1997; amd. Sec. 2, Ch. 524, L. 1997.

50-16-1004. AIDS, HIV-related conditions, and HIV infection to be treated as other communicable diseases. It is the intent of the legislature to treat AIDS, HIV-related conditions, and HIV infection in the same manner as other communicable diseases, including sexually transmitted diseases, by adopting the most currently accepted public health practices with regard to testing, reporting, partner notification, and disease intervention. Nothing in this section is intended to prohibit the department from allowing testing for HIV infection to be performed and reported without identification of the subject of the test. The department shall adopt rules, as provided in 50-1-202, to reflect this policy.

History: En. Sec. 1, Ch. 524, L. 1997.

Cross-References

Disclosure of communicable diseases, 50-16-603.

Sexually transmitted diseases, Title 50, ch. 18.

50-16-1005 and 50-16-1006 reserved.

50-16-1007. Testing — counseling — informed consent — penalty. (1) An HIV-related test may be ordered only by a health care provider and only after receiving the informed consent of:

(a) the subject of the test;

(b) the subject's legal guardian;

(c) the subject's next of kin or significant other if:

(i) the subject is unconscious or otherwise mentally incapacitated;

(ii) there is no legal guardian;

(iii) there are medical indications of an HIV-related condition; and

(iv) the test is advisable in order to determine the proper course of treatment of the subject; or

(d) the subject's next of kin or significant other or the person, if any, designated by the subject in hospital records to act on the subject's behalf if:

(i) the subject is in a hospital; and

(ii) the circumstances in subsections (1)(c)(i) through (1)(c)(iv) exist.

(2) When a health care provider orders an HIV-related test, the provider also certifies that informed consent has been received prior to ordering an HIV-related test.

(3) Before the subject of the test gives informed consent, the health care provider ordering the test or the provider's designee shall give pretest counseling to:

(a) the subject;

(b) the subject's legal guardian;

(c) the subject's next of kin or significant other if:

(i) the subject is unconscious or otherwise mentally incapacitated; and

(ii) there is no guardian; or

(d) the subject's next of kin or significant other or the person, if any, designated by the subject in hospital records to act on the subject's behalf if:

(i) the subject is in the hospital; and

(ii) the circumstances in subsections (1)(c)(i) and (1)(c)(ii) exist.

(4) A health care provider who does not provide HIV-related tests on an anonymous basis shall inform each person who wishes to be tested that anonymous testing is available at one of the counseling-testing sites established by the department, or elsewhere.

(5) The subject of an HIV-related test or any of the subject's representatives authorized by subsection (1) to act in the subject's stead shall designate, after giving informed consent, a health care provider to receive the results of an HIV-related test. The designated health care provider shall inform the subject or the subject's representative of the results in person.

(6) At the time that the subject of a test or the subject's representative is given the test results, the health care provider or the provider's designee shall give the subject or the subject's representative posttest counseling.

(7) If a test is performed as part of an application for insurance, the insurance company shall obtain the informed consent in writing and ensure that:

(a) negative results can be obtained by the subject or the subject's representative upon request; and

(b) positive results are returned to the health care provider designated by the subject or the subject's representative.

(8) A minor may consent or refuse to consent to be the subject of an HIV-related test, pursuant to 41-1-402.

(9) Subsections (1) through (6) do not apply to:

(a) the performance of an HIV-related test by a health care provider or health care facility that procures, processes, distributes, or uses a human body part donated for a purpose specified under Title 72, chapter 17, if the test is necessary to assure medical acceptability of the gift for the purposes intended;

(b) the performance of an HIV-related test for the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher;

(c) the performance of an HIV-related test when:

(i) the subject of the test is unconscious or otherwise mentally incapacitated;

(ii) there are medical indications of an HIV-related condition;

(iii) the test is advisable in order to determine the proper course of treatment of the subject; and

(iv) none of the individuals listed in subsection (1)(b), (1)(c), or (1)(d) exists or is available within a reasonable time after the test is determined to be advisable; or

(d) the performance of an HIV-related test conducted pursuant to 50-18-107 or 50-18-108, with the exception that the pretest and posttest counseling must still be given.

(10) (a) If an agent or employee of a health care facility, a health care provider with privileges at the health care facility, or a person providing emergency services who is described in 50-16-702 has been voluntarily or involuntarily exposed to a patient in a manner that may allow infection by HIV by a mode of transmission recognized by the centers for disease control of the United States public health service, the physician of the patient shall, upon request of the exposed person, notify the patient of the exposure and seek informed consent in accordance with guidelines of the centers for disease control for an HIV-related test of the patient. If informed consent cannot be obtained, the health care facility, in accordance with the infectious disease exposure guidelines of the health care facility, may, without the consent of the patient, conduct the test on previously drawn blood or previously collected bodily fluids to determine if the patient is in fact infected. A health care facility is not required to perform a test authorized in this subsection. If a test is conducted pursuant to this subsection, the health care facility shall inform the patient of the results and provide the patient with posttest counseling. The patient may not be charged for a test performed pursuant to this subsection. The results of a test performed pursuant to this subsection may not be made part of the patient's record and are subject to 50-16-1009(1).

(b) For the purposes of this subsection (10), "informed consent" means an agreement that is freely executed, either orally or in writing, by the subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject is incapacitated, by the subject's next of kin, significant other, or a person designated by the subject in hospital records to act on the subject's behalf.

(11) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of $1,000 or imprisonment for up to 6 months, or both.

History: En. Sec. 4, Ch. 614, L. 1989; amd. Sec. 2, Ch. 544, L. 1991; amd. Sec. 6, Ch. 476, L. 1993; amd. Sec. 3, Ch. 524, L. 1997.

50-16-1008. Testing of donors of organs, tissues, and semen required — penalty. (1) Prior to donation of an organ, semen, or tissues, HIV-related testing of a prospective donor, in accordance with nationally accepted standards adopted by the department by rule, is required unless the transplantation of an indispensable organ is necessary to save a patient's life and there is not sufficient time to perform an HIV-related test.

(2) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of up to $1,000 or imprisonment of up to 6 months, or both.

History: En. Sec. 5, Ch. 614, L. 1989; amd. Sec. 3, Ch. 544, L. 1991.

Cross-References

Uniform Anatomical Gift Act, Title 72, ch. 17.

50-16-1009. Confidentiality of records — notification of contacts — penalty for unlawful disclosure. (1) Except as provided in subsection (2), a person may not disclose or be compelled to disclose the identity of a subject of an HIV-related test or the results of a test in a manner that permits identification of the subject of the test, except to the extent allowed under the Uniform Health Care Information Act, Title 50, chapter 16, part 5.

(2) A local board, local health officer, or the department may disclose the identity of the subject of an HIV-related test or the test results only to the extent allowed by the Government Health Care Information Act, Title 50, chapter 16, part 6, unless it is in possession of that information because a health care provider employed by it provided health care to the subject, in which case the Uniform Health Care Information Act governs the release of that information.

(3) If a health care provider informs the subject of an HIV-related test that the results are positive, the provider shall encourage the subject to notify persons who are potential contacts. If the subject is unable or unwilling to notify all contacts, the health care provider may ask the subject to disclose voluntarily the identities of the contacts and to authorize notification of those contacts by a health care provider. A notification may state only that the contact may have been exposed to HIV and may not include the time or place of possible exposure or the identity of the subject of the test.

(4) A person who discloses or compels another to disclose confidential health care information in violation of this section is guilty of a misdemeanor punishable by a fine of $1,000 or imprisonment for 1 year, or both.

History: En. Sec. 6, Ch. 614, L. 1989; amd. Sec. 4, Ch. 544, L. 1991.

50-16-1010 through 50-16-1012 reserved.

50-16-1013. Civil remedy. (1) A person aggrieved by a violation of this part has a right of action in the district court and may recover for each violation:

(a) against a person who negligently violates a provision of this part, damages of $5,000 or actual damages, whichever is greater;

(b) against a person who intentionally or recklessly violates a provision of this part, damages of $20,000 or actual damages, whichever is greater;

(c) reasonable attorney fees; and

(d) other appropriate relief, including injunctive relief.

(2) An action under this section must be commenced within 3 years after the cause of action accrues.

(3) The department may maintain a civil action to enforce this part in which the court may order any relief permitted under subsection (1).

(4) Nothing in this section limits the rights of a subject of an HIV-related test to recover damages or other relief under any other applicable law or cause of action.

(5) Nothing in this part may be construed to impose civil liability or criminal sanctions for disclosure of an HIV-related test result in accordance with any reporting requirement for a diagnosed case of AIDS or an HIV-related condition by the department or the centers for disease control of the United States public health service.

History: En. Sec. 7, Ch. 614, L. 1989; amd. Sec. 5, Ch. 544, L. 1991.

Cross-References

Statutes of limitations, Title 27, ch. 2.

Injunctions, Title 27, ch. 19.

CHAPTER 17

TUBERCULOSIS CONTROL

Part 1 — General Provisions

50-17-101. Policy of state.
50-17-102. Definitions.
50-17-103. Powers and duties of department.
50-17-104. Repealed.
50-17-105. Application to require examination or treatment for tuberculosis.
50-17-106. Hearing on the application.
50-17-107. Adjudication of application.
50-17-108. Commitment to hospital on noncompliance with order.
50-17-109. Order of commitment — warrant for transportation.
50-17-110. Confinement in hospital — submission to treatment.
50-17-111. Transfer of person to another hospital.
50-17-112. Procedure to obtain release from commitment.
50-17-113. Voluntary release.
50-17-114. Payment of costs, expenses, and fees.
50-17-115. Emergency detainment — petition — detention.

Part 1
General Provisions

Part Cross-References

Municipal power to establish detention hospital to prevent spread of disease, 7-34-4101.

Montana State Hospital, 53-21-601.

Quarantine for tuberculosis control in livestock, Title 81, ch. 2, part 1.

50-17-101. Policy of state. It is the public policy of the state to:

(1) protect persons from the danger of tuberculosis;

(2) provide and maintain a comprehensive program for the prevention, abatement, and adequate control working toward eradication of the disease;

(3) cooperate with other state agencies and the federal government in carrying out these objectives.

History: En. Sec. 24, Ch. 197, L. 1967; R.C.M. 1947, 69-4301; amd. Sec. 1, Ch. 61, L. 1985.

50-17-102. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Approved course of treatment" means a course of treatment for tuberculosis that includes medical treatment prescribed by a physician and consistent with accepted medical standards, as well as appropriate followup to ensure public health and safety as set out in the rules of the department.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Local board" means a city, county, city-county, or district board of health.

(4) "Tuberculosis" means a disease caused by mycobacterium tuberculosis.

History: (1)En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; (2), (3)En. Sec. 25, Ch. 197, L. 1967; Sec. 69-4302, R.C.M. 1947; R.C.M. 1947,

69-4102(2), 69-4302; amd. Sec. 2, Ch. 61, L. 1985; amd. Sec. 112, Ch. 418, L. 1995; amd. Sec. 289, Ch. 546, L. 1995.

50-17-103. Powers and duties of department. (1) The department shall:

(a) accept, spend, and distribute federal funds available for tuberculosis control;

(b) collect and study data on the incidence of tuberculosis;

(c) adopt rules for the determination and control of tuberculosis.

(2) The department may, if appropriate, contract with federal agencies or other state agencies for receipt and expenditure of federal funds.

History: En. Secs. 26, 27, Ch. 197, L. 1967; amd. Secs. 45, 104, Ch. 349, L. 1974; R.C.M. 1947, 69-4303, 69-4304; amd. Sec. 3, Ch. 61, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Department empowered to control communicable diseases, 50-1-202.

50-17-104. Repealed. Sec. 19, Ch. 579, L. 1993.

History: En. Secs. 39, 40, Ch. 197, L. 1967; amd. Secs. 46, 47, Ch. 349, L. 1974; R.C.M. 1947, 69-4316(part), 69-4317; amd. Sec. 9, Ch. 361, L. 1983; amd. Sec. 4, Ch. 61, L. 1985.

50-17-105. Application to require examination or treatment for tuberculosis. (1) The department or a local board may apply for an order from the district court if a person is reasonably suspected to have or to have been exposed to tuberculosis, upon request of:

(a) a physician legally authorized to practice medicine in the state;

(b) the department; or

(c) a local health officer.

(2) The application shall request that the person be ordered to:

(a) submit to an examination for tuberculosis and, if he is found to have tuberculosis, to complete an approved course of treatment; or

(b) enter or return to a hospital for treatment or follow an approved course of treatment outside of a hospital.

(3) The application for an order provided for in subsections (1) and (2) of this section shall allege that the person:

(a) is suspected of having tuberculosis or has been exposed to tuberculosis and has refused to be examined for tuberculosis as required by rules adopted by the department; or

(b) has tuberculosis and has refused to be treated or to complete an approved course of treatment.

(4) The application shall state the names of witnesses by which facts alleged may be proved. At least one witness must be a physician.

History: (1), (2)En. Sec. 28, Ch. 197, L. 1967; Sec. 69-4305, R.C.M. 1947; (3), (4)En. Sec. 29, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 69-4306, R.C.M. 1947; R.C.M. 1947, 69-4305, 69-4306; amd. Sec. 6, Ch. 37, L. 1979; amd. Sec. 5, Ch. 61, L. 1985.

50-17-106. Hearing on the application. The procedure for a hearing on the application is as follows:

(1) A summons stating the time and place of the hearing and a copy of the application are personally served on the person.

(2) The summons, with endorsement of the time of service, is filed with the district court prior to the hearing.

(3) Not fewer than 3 or more than 7 days after service of the summons, a hearing is held in the district court.

(4) The court examines witnesses in attendance or others it wishes to call.

History: En. Sec. 30, Ch. 197, L. 1967; R.C.M. 1947, 69-4307.

Cross-References

"Contested case" defined — applicability of Montana Administrative Procedure Act, 2-4-102.

50-17-107. Adjudication of application. Following the hearing, the court shall find that the allegations of the application are:

(1) true and order the person to enter or return to a hospital for treatment or to follow an approved course of treatment outside of a hospital;

(2) true and order the person to submit to an examination for tuberculosis within a specified time and to complete an approved course of treatment; or

(3) not true and order the person discharged.

History: En. Sec. 31, Ch. 197, L. 1967; R.C.M. 1947, 69-4308; amd. Sec. 6, Ch. 61, L. 1985.

50-17-108. Commitment to hospital on noncompliance with order. If a person fails to comply with an order to submit to an examination for tuberculosis within the time set or to complete an approved course of treatment, the court shall order him committed to a hospital.

History: En. Sec. 32, Ch. 197, L. 1967; R.C.M. 1947, 69-4309; amd. Sec. 7, Ch. 61, L. 1985.

Cross-References

Application of Montana Rules of Civil Procedure to commitment proceedings, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

50-17-109. Order of commitment — warrant for transportation. The court shall send certified copies of an order of commitment to the hospital and the department or local board of health and issue a warrant directed to the sheriff to transport the person to the designated hospital.

History: En. Sec. 33, Ch. 197, L. 1967; R.C.M. 1947, 69-4310.

50-17-110. Confinement in hospital — submission to treatment. (1) A person committed under 50-17-107 or 50-17-108 shall remain at the hospital until discharged under 50-17-112 or 50-17-113, but he is not required to submit to medical or surgical treatment without his written consent, the consent of his next of kin or guardian if the person is incompetent, or the consent of his parent or guardian if the person is a minor.

(2) The person in charge of the hospital may use reasonable means to insure that the person committed remains at the hospital.

History: En. Sec. 34, Ch. 197, L. 1967; R.C.M. 1947, 69-4311; amd. Sec. 8, Ch. 61, L. 1985.

Cross-References

Validity of consent for medical treatment, Title 41, ch. 1, part 4.

Guardianship and conservatorship, Title 72, ch. 5.

50-17-111. Transfer of person to another hospital. If it is in his best interest, a person may be transferred from the hospital to which he was committed to another hospital approved by the department. The person in charge of the hospital to which the person was committed shall notify the court that ordered commitment, and the department or local board that requested commitment, of the transfer.

History: En. Sec. 37, Ch. 197, L. 1967; R.C.M. 1947, 69-4314.

50-17-112. Procedure to obtain release from commitment. (1) One hundred and eighty days or more after the date of his commitment, a person committed under 50-17-107 or 50-17-108 may apply to the court that ordered his commitment for a release.

(2) Not fewer than 3 or more than 7 days after receipt of the request, the court shall hold a hearing.

(3) Following the hearing, the court shall:

(a) order his discharge if it finds he has completed an approved course of treatment or does not have tuberculosis; or

(b) dismiss the request if it finds he still has tuberculosis or he has refused to submit to an examination to determine whether he has tuberculosis or has not yet completed an approved course of treatment.

History: En. Sec. 35, Ch. 197, L. 1967; R.C.M. 1947, 69-4312; amd. Sec. 9, Ch. 61, L. 1985.

50-17-113. Voluntary release. (1) If the person in charge of the hospital and the department or local board that requested commitment concur that a person either does not have tuberculosis or has submitted to an approved course of treatment, the person shall be released from the hospital.

(2) The person in charge of the hospital shall file a notice of date of release with the court that ordered commitment.

History: En. Sec. 36, Ch. 197, L. 1967; R.C.M. 1947, 69-4313; amd. Sec. 10, Ch. 61, L. 1985.

50-17-114. Payment of costs, expenses, and fees. (1) Court costs, expenses, and all fees shall be paid by the treasurer of the county from which a person is committed.

(2) Expenses and fees shall be paid as follows:

(a) to sheriffs and their deputies the same fees allowed for similar services in district court;

(b) to physicians, not to exceed two, fees as set by the court;

(c) to witnesses the same fees and mileage provided for attendance in district court;

(d) to persons other than the sheriff or his deputies who transport a person to or from a hospital, witness fees and expenses as verified by the court.

(3) Expenses of transporting a person to a hospital for commitment shall be paid from the general fund of the county from which the person is committed.

History: (1), (2)En. Sec. 38, Ch. 197, L. 1967; Sec. 69-4315, R.C.M. 1947; (3)En. Sec. 39, Ch. 197, L. 1967; amd. Sec. 46, Ch. 349, L. 1974; Sec. 69-4316, R.C.M. 1947; R.C.M. 1947, 69-4315, 69-4316(part).

Cross-References

Mileage allowance, 2-18-503, 2-18-504, 3-15-201.

Mileage and expenses of Sheriff, 7-32-2143.

Witness fees, Title 26, ch. 2, part 5.

50-17-115. Emergency detainment — petition — detention. (1) If a physician, the department, or a local health officer reasonably believes that a person has communicable tuberculosis and that he is likely to attempt to leave the jurisdiction to avoid a hearing on commitment to a hospital, the physician, department, or local health officer shall notify the sheriff of the county in which the person is found, who shall cause the person to be detained in a hospital. At least by the next regular business day, the physician, department, or local health officer shall petition for an order from the district court of the county in which the person is found for continued detention of the person and to require examination or treatment for tuberculosis pursuant to 50-17-105. The sheriff must serve the summons required by 50-17-106 on the person the same day the petition is filed.

(2) Immediately after the petition is filed the court will decide whether further emergency detention is required and may order continued hospital detention of the person for no more than 7 days if it finds that the person is an unacceptable danger to the public health and safety in that he probably has communicable tuberculosis and unless detained will probably leave the jurisdiction to avoid a hearing pursuant to this part.

(3) The district court of the county in which the person is found has jurisdiction over the person for the purposes of this section. The district court may, in the interests of justice, order that jurisdiction over further proceedings be transferred to the district court of the county of the person's residence.

History: **En. Sec. 1, Ch. 460, L. 1989.**

CHAPTER 18

SEXUALLY TRANSMITTED DISEASES

Part 1 — General Provisions

50-18-101. Sexually transmitted diseases defined.
50-18-102. Powers and duties of department.
50-18-103. Cooperation with federal agencies — federal funds.
50-18-104. Serological test for syphilis.
50-18-105. Rules of department binding.
50-18-106. Duty to report cases.
50-18-107. Powers and duties of health officers.
50-18-108. Examination and treatment of prisoners.
50-18-109. Permissible release of information concerning infected persons.
50-18-110. Unlawful dispensing of drugs for cure or alleviation of sexually transmitted disease.
50-18-111. Certificate of freedom from sexually transmitted disease not to be issued.
50-18-112. Infected person not to expose another to sexually transmitted disease.
50-18-113. Violation a misdemeanor.

Part 1
General Provisions

Part Cross-References

AIDS education and prevention, Title 50, ch. 16, part 10.

50-18-101. Sexually transmitted diseases defined. Human immunodeficiency virus (HIV), syphilis, gonorrhea, chancroid, chlamydia genital infections, lymphogranuloma venereum, and granuloma inguinale are sexually transmitted diseases. Sexually transmitted diseases are contagious, infectious, communicable, and dangerous to public health.

History: **En. Sec. 97, Ch. 197, L. 1967; R.C.M. 1947, 69-4601(part); amd. Sec. 1, Ch. 440, L. 1989; amd. Sec. 2, Ch. 71, L. 1993.**

50-18-102. Powers and duties of department. The department of public health and human services shall undertake to prevent, control, and prescribe treatments for sexually transmitted diseases and may conduct education campaigns for this purpose.

History: **En. Sec. 98, Ch. 197, L. 1967; amd. Sec. 57, Ch. 349, L. 1974; R.C.M. 1947, 69-4602(part); amd. Sec. 2, Ch. 440, L. 1989; amd. Sec. 113, Ch. 418, L. 1995; amd. Sec. 290, Ch. 546, L. 1995.**

50-18-103. Cooperation with federal agencies — federal funds. (1) The department of public health and human services shall cooperate with federal agencies and may expend federal funds made available to the state for the prevention, control, and treatment of sexually transmitted diseases.

(2) The department may accept federal funds available for the prevention, control, and treatment of sexually transmitted diseases, deposit funds in the state treasury, and disburse the funds.

History: **En. Secs. 98, 99, Ch. 197, L. 1967; amd. Secs. 57, 58, Ch. 349, L. 1974; R.C.M. 1947, 69-4602(part), 69-4603; amd. Sec. 3, Ch. 440, L. 1989; amd. Sec. 114, Ch. 418, L. 1995; amd. Sec. 291, Ch. 546, L. 1995.**

50-18-104. Serological test for syphilis. (1) The department of public health and human services shall approve a standard serological test for syphilis. It shall also approve laboratories that may make the tests.

(2) On request, the department shall make laboratory tests required by this chapter.

History: **En. Sec. 107, Ch. 197, L. 1967; R.C.M. 1947, 69-4611; amd. Sec. 1, Ch. 41, L. 1985; amd. Sec. 4, Ch. 440, L. 1989; amd. Sec. 115, Ch. 418, L. 1995; amd. Sec. 292, Ch. 546, L. 1995.**

50-18-105. Rules of department binding. Rules adopted by the department of public health and human services for carrying out the provisions of this chapter are binding on all persons and have the effect of law.

History: **En. Sec. 112, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4616; amd. Sec. 116, Ch. 418, L. 1995; amd. Sec. 293, Ch. 546, L. 1995.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-18-106. Duty to report cases. If a physician or other person knows or has reason to suspect that a person who has a sexually transmitted disease is conducting himself in a way which might expose another to infection, he shall immediately notify the local health officer of the name and address of the diseased person and the essential facts in the case.

History: **En. Secs. 100, 103, Ch. 197, L. 1967; R.C.M. 1947, 69-4604, 69-4607; amd. Sec. 5, Ch. 440, L. 1989.**

Cross-References

Physicians to report cases of communicable disease, 37-2-301.

Report of exposure to infectious disease, Title 50, ch. 16, part 7.

50-18-107. Powers and duties of health officers. (1) If found necessary or desirable to protect public health, state and local health officers or their authorized deputies or agents shall:

(a) examine or have examined persons reasonably suspected of being infected with a sexually transmitted disease;

(b) require persons infected to report for treatment to a reputable physician and continue treatment, which may be at public expense, until cured;

(c) isolate or quarantine persons who refuse examination or treatment;

(d) investigate sources of infection of a sexually transmitted disease.

(2) No one but the state or local health officer may terminate the isolation or quarantine. Examinations may be made repeatedly as deemed advisable or desirable.

History: En. Sec. 101, Ch. 197, L. 1967; R.C.M. 1947, 69-4605; amd. Sec. 6, Ch. 440, L. 1989.

50-18-108. Examination and treatment of prisoners. Any person confined or imprisoned in any state, county, or municipal prison within the state may be examined for a sexually transmitted disease. If infected, the person must be treated by health authorities.

History: En. Sec. 102, Ch. 197, L. 1967; R.C.M. 1947, 69-4606; amd. Sec. 7, Ch. 440, L. 1989.

Cross-References

County jails, Title 7, ch. 32, part 22.

Municipal jails, Title 7, ch. 32, part 42.

Sexually transmitted disease testing on person convicted of sexual offense, 46-18-256.

State corrections, Title 53, ch. 30.

50-18-109. Permissible release of information concerning infected persons. (1) Information concerning persons infected or reasonably suspected to be infected with a sexually transmitted disease may be released only:

(a) to personnel of the department of public health and human services;

(b) to a physician who has written consent of the person whose record is requested;

(c) to a local health officer; or

(d) by the department of public health and human services or a local health officer or board under the circumstances allowed by Title 50, chapter 16, part 6.

(2) For the purposes of this section, the term "information" includes all knowledge or intelligence and all communications of all knowledge or intelligence, oral or written or in record form, and also includes but is not limited to information concerning the location or nature of the activities or work of all local, state, or federal employees or officers engaged in sexually transmitted disease eradication work. Communications to and from personnel are privileged as provided in 26-1-810.

(3) The purpose of this section is to protect and preserve the principle of confidentiality in sexually transmitted disease work by local, state, and federal public personnel, as confidentiality is important to the success of all sexually transmitted disease eradication work and endeavor, and to require that the principle of confidentiality in the work remain inviolate.

History: En. Sec. 106, Ch. 197, L. 1967; amd. Sec. 1, Ch. 135, L. 1971; amd. Sec. 109, Ch. 349, L. 1974; R.C.M. 1947, 69-4610; amd. Sec. 8, Ch. 440, L. 1989; amd. Sec. 117, Ch. 418, L. 1995; amd. Sec. 294, Ch. 546, L. 1995.

Cross-References

Right of privacy guaranteed, Art. II, sec. 10, Mont. Const.

50-18-110. Unlawful dispensing of drugs for cure or alleviation of sexually transmitted disease. It is unlawful to prescribe, sell, or recommend any drugs, medicines, or other substances for the cure or alleviation of a sexually transmitted disease except upon prescription signed by a person legally authorized to do so by the pharmacy laws of this state.

History: En. Sec. 104, Ch. 197, L. 1967; R.C.M. 1947, 69-4608; amd. Sec. 9, Ch. 440, L. 1989.

Cross-References

Licensing of physicians, Title 37, ch. 3, part 3.

50-18-111. Certificate of freedom from sexually transmitted disease not to be issued. No person shall issue a certificate of freedom from a sexually transmitted disease. However, a physician or health officer may issue a statement of freedom from diseases in an infectious state only if it is written in such form or given under safeguards that will prevent its use in solicitation for sexual intercourse. These statements shall not be used for solicitation for immoral purposes.

History: En. Sec. 105, Ch. 197, L. 1967; R.C.M. 1947, 69-4609; amd. Sec. 10, Ch. 440, L. 1989.

50-18-112. Infected person not to expose another to sexually transmitted disease. A person infected with a sexually transmitted disease may not knowingly expose another person to infection.

History: En. Sec. 97, Ch. 197, L. 1967; R.C.M. 1947, 69-4601(part); amd. Sec. 11, Ch. 440, L. 1989.

50-18-113. Violation a misdemeanor. A person who violates provisions of this chapter or rules adopted by the department of public health and human services concerning a sexually transmitted disease or who fails or refuses to obey any lawful order issued by a state or local health officer is guilty of a misdemeanor.

History: En. Sec. 113, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4617; amd. Sec. 12, Ch. 440, L. 1989; amd. Sec. 118, Ch. 418, L. 1995; amd. Sec. 295, Ch. 546, L. 1995.

Cross-References

Penalty when none specified, 46-18-212.

CHAPTER 19

PREGNANT WOMEN AND NEWBORN INFANTS

Part 1 — Serological Test for Women Seeking Prenatal Care

50-19-101. Definitions.
50-19-102. Duties of department.
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50-19-105. Report of positive test results.
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Part 2 — Metabolic Tests of Infants—Genetics Program

50-19-201. Definitions.
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50-19-321. Contracts for services.
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50-19-323. Coordination of programs.

Part 4 — Fetal, Infant, and Child Mortality Prevention Act

50-19-401. Short title.
50-19-402. Statement of policy — access to information.
50-19-403. Local fetal, infant, and child mortality review team.
50-19-404. Records — confidentiality.
50-19-405. Unauthorized disclosure by review team member — civil penalty.
50-19-406. Unauthorized disclosure by review team member — misdemeanor.

Part 5 — Breastfeeding

50-19-501. Nursing mother and infant protection.

Part 1
Serological Test for Women Seeking Prenatal Care

50-19-101. Definitions. (1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Standard serological test" means a test for syphilis, rubella immunity, and blood group, including ABO (Landsteiner blood type designation—O, A, B, AB) and RH (Dd) type, approved by the department.

History: En. Sec. 1, Ch. 228, L. 1973; amd. Sec. 25, Ch. 187, L. 1977; R.C.M. 1947, 69-6701; amd. Sec. 119, Ch. 418, L. 1995; amd. Sec. 296, Ch. 546, L. 1995.

50-19-102. Duties of department. (1) The department shall provide all necessary printing and pay all necessary expenses relative to administration of this part.

(2) Reasonable rules for reports to be submitted by any laboratory making tests and the manner of furnishing the reports to the physician and the state shall be adopted by the department.

(3) The department may use information derived from reports of positive tests for sexually transmitted diseases for follow-up procedures required by law or considered necessary by the department for the protection of public health.

History: **En. Secs. 3, 7, Ch. 228, L. 1973; R.C.M. 1947, 69-6703(1), (3), 69-6707; amd. Sec. 16, Ch. 440, L. 1989.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duty to report cases of sexually transmitted diseases, 50-18-106.

50-19-103. Prenatal blood sample required for serological test. (1) Every female, regardless of age or marital status, seeking prenatal care from a physician is required to submit blood specimen for the purpose of a standard serological test. In submitting the specimen to the laboratory, the physician shall designate it as a prenatal test.

(2) A physician or other person authorized by law to practice obstetrics who attends a pregnant woman shall at the first professional visit take the blood sample and submit it to a laboratory.

(3) A person permitted to attend a pregnant woman, but not permitted to take blood samples, shall have the sample taken by a person permitted to take blood samples and submit it to a laboratory.

(4) Any physician or other person required to take the blood sample who violates this part is guilty of a misdemeanor. However, a person who requests a sample of blood in accordance with this provision and whose request is refused is not guilty of a violation of this section.

History: **En. Sec. 2, Ch. 228, L. 1973; R.C.M. 1947, 69-6702.**

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

50-19-104. Approved laboratory to perform syphilis and rubella immunity tests. (1) The tests for syphilis and rubella immunity must be done by the laboratory of the department, a laboratory approved by the department, any other state laboratory, or a United States public health service or armed forces laboratory.

(2) The department may establish a reasonable fee for the tests done by the department laboratory.

History: **En. Sec. 3, Ch. 228, L. 1973; R.C.M. 1947, 69-6703(part); amd. Sec. 1, Ch. 72, L. 1985.**

50-19-105. Report of positive test results. All positive laboratory tests for any sexually transmitted diseases must be reported to the department by the laboratory preparing the test. The department shall prescribe the form and way of reporting.

History: **En. Sec. 3, Ch. 228, L. 1973; R.C.M. 1947, 69-6703(2); amd. Sec. 13, Ch. 440, L. 1989.**

Cross-References

Sexually transmitted diseases, Title 50, ch. 18.

50-19-106. Repealed. Sec. 5, Ch. 154, L. 1983.

History: **En. Sec. 4, Ch. 228, L. 1973; amd. Sec. 26, Ch. 187, L. 1977; R.C.M. 1947, 69-6704.**

50-19-107. Required and permissible exhibit of test results. The report of the results of the test so certified by the laboratory shall be exhibited by the physician to the patient. Upon request of the patient, the report of the results of the test may be exhibited to the spouse of the patient, or if the patient is a minor, report of the results of the test may be exhibited to the minor's parents or to the minor's legal guardian.

History: En. Sec. 5, Ch. 228, L. 1973; R.C.M. 1947, 69-6705.

50-19-108. Unauthorized divulgence of information a misdemeanor. Certificates, laboratory statements or reports, or any other matters in this part referred to and the information therein contained shall be confidential and may not be divulged to or open to inspection by any person other than the patient or those designated by the patient to receive the information or other than state and local health officers or their duly authorized representatives. A person who divulges this information or opens to inspection the certificates, statements, or reports without authority to any person not by law entitled to them is guilty of a misdemeanor and may be fined not more than $100.

History: En. Sec. 6, Ch. 228, L. 1973; R.C.M. 1947, 69-6706.

Cross-References

Right of privacy guaranteed, Art. II, sec. 10, Mont. Const.

Uniform Health Care Information Act, Title 50, ch. 16, part 5.

50-19-109. Waiver of test by court when contrary to patient's religious creed. The district court within the county wherein any person affected by this part resides may waive the requirements of this part as to the person if the judge is satisfied, by affidavit or other proof, that the tests required by the part are contrary to the tenets or practices of the religious creed of which the applicant is an adherent and that the public health and welfare will not be injuriously affected thereby.

History: En. Sec. 8, Ch. 228, L. 1973; R.C.M. 1947, 69-6708.

Cross-References

Freedom of religion, Art. II, sec. 5, Mont. Const.

50-19-110. Birth or fetal death certificate to state whether test made. A birth or fetal death certificate shall state whether a standard serological test was made on the specimen of blood, but the birth or fetal death certificate may not show the result of the test. The certificate shall state the approximate date when the specimen was taken, and if no test was made, the reason shall be stated.

History: En. Sec. 9, Ch. 228, L. 1973; R.C.M. 1947, 69-6709.

Part 2

Metabolic Tests of Infants — Genetics Program

50-19-201. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Newborn" means an infant under 28 days of life.

(3) "Person" means an individual, firm, partnership, association, corporation, or other entity, whether organized for profit or not.

History: En. Sec. 1, Ch. 227, L. 1973; R.C.M. 1947, 69-6710; amd. Sec. 120, Ch. 418, L. 1995; amd. Sec. 297, Ch. 546, L. 1995.

50-19-202. Administration. This part shall be administered by the department, and the department may adopt rules for the administration of this part.

History: En. Sec. 3, Ch. 227, L. 1973; R.C.M. 1947, 69-6712.

Cross-References

Adoption of publication of rules, Title 2, ch. 4, part 3.

50-19-203. Metabolic tests. (1) A person in charge of a facility wherein a child is born or wherein a newborn infant is cared for or a person responsible for the registration of birth of an infant shall ensure each infant is administered tests designed to detect inborn metabolic errors as shall be required to be administered under rules adopted by the department.

(2) The tests shall be done by an approved laboratory. An approved laboratory shall be the laboratory of the department or a laboratory approved by the department.

History: En. Sec. 2, Ch. 227, L. 1973; R.C.M. 1947, 69-6711.

50-19-204. Department and Montana developmental center to furnish assistance when requested. (1) The department and the staff of the Montana developmental center shall make available and furnish, when requested, any assistance and services permitted by law to achieve the legislative intent of this part.

(2) The department may determine its procedure for advising the attending physician, the parents, or legal guardian of the newborn infant of any medical results of the test and the availability of assistance, services, or counseling of the department and the staff of the Montana developmental center.

(3) The department may determine procedures for coordination with the Montana developmental center in providing the services and assistance required in this part.,

History: En. Sec. 4, Ch. 227, L. 1973; R.C.M. 1947, 69-6713; amd. Sec. 1, Ch. 151, L. 1985.

Cross-References

Primary function of Montana Developmental Center, 53-20-501.

50-19-205 through 50-19-210 reserved.

50-19-211. Voluntary genetics program established. A voluntary statewide genetics program is established in the department to offer testing, counseling, and education to parents and prospective parents. The program includes, but is not limited to, the following services:

(1) followup programs for newborn testing, with emphasis on the counseling and education of women at risk for maternal phenylketonuria;

(2) comprehensive genetic services to all areas of the state and all segments of the population;

(3) development of counseling and testing programs for the diagnosis and management of genetic conditions and metabolic disorders; and

(4) development and expansion of educational programs for physicians, allied health professionals, and the public with respect to:

(a) the nature of genetic processes;

(b) the inheritance patterns of genetic conditions; and

(c) the means, methods, and facilities available to diagnose, counsel, and treat genetic conditions and metabolic disorders.

History: En. Sec. 1, Ch. 706, L. 1985.

Cross-References

Genetics program fee, 33-2-712.

Group disability policy exemption, 33-2-713.

Part 3

Montana Initiative for the Abatement of Mortality in Infants

50-19-301. Short title. This part may be cited as "The Montana Initiative for the Abatement of Mortality in Infants (MIAMI) Act".

History: En. Sec. 1, Ch. 649, L. 1989.

50-19-302. Purposes. The purposes of this part are to:

(1) assure that mothers and children, in particular those with low income or with limited availability of health services, receive access to quality maternal and child health services;

(2) reduce infant mortality and the number of low birthweight babies; and

(3) prevent the incidence of children born with chronic illnesses, birth defects, or severe disabilities as a result of inadequate prenatal care.

History: En. Sec. 2, Ch. 649, L. 1989.

50-19-303. Definitions. For purposes of this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Low income" means, with respect to an individual or family, income that does not exceed the official federal poverty threshold as defined by the federal office of management and budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

(3) "Project" means the MIAMI project established in 50-19-311.

(4) "Service provider" means a person, agency, or organization that has a contract to provide services under the MIAMI project.

History: En. Sec. 3, Ch. 649, L. 1989; amd. Sec. 121, Ch. 418, L. 1995; amd. Sec. 298, Ch. 546, L. 1995; amd. Sec. 7, Ch. 171, L. 1997.

50-19-304 through 50-19-310 reserved.

50-19-311. MIAMI project. (1) There is a MIAMI project established in the department.

(2) Under the project, the department shall provide the following services:

(a) infant mortality review;

(b) morbidity review of births involving low birthweight babies;

(c) low birthweight prevention;

(d) assistance to low-income women and infants in gaining access to prenatal care, delivery, and postpartum care;

(e) referral of low-income women and children to other programs to protect the health of women and children, including:

(i) supplemental food programs for women, infants, and children;

(ii) family planning services; and
(iii) other maternal and child health programs;
(f) public education and community outreach to inform the public on:
(i) the importance of receiving early prenatal care;
(ii) the need for good health habits during pregnancy; and
(iii) the availability of special services for pregnant women and for children.

History: En. Sec. 4, Ch. 649, L. 1989; amd. Sec. 2, Ch. 634, L. 1991.

50-19-312. Repealed. Sec. 16, Ch. 171, L. 1997.

History: En. Sec. 6, Ch. 649, L. 1989; amd. Sec. 3, Ch. 634, L. 1991.

50-19-313 through 50-19-320 reserved.

50-19-321. Contracts for services. (1) The department shall contract with service providers to provide services under the MIAMI project.

(2) In selecting service providers, the department shall take into consideration the past performance of the person, agency, or organization in providing similar services, the demonstrated effectiveness of the service provider in delivering comparable or related services, the fiscal accountability of the service provider, and such other factors as the department determines to be appropriate.

History: En. Sec. 7, Ch. 649, L. 1989.

50-19-322. Federal and other aid. (1) The department may apply for and receive federal aid and other funding available for the MIAMI project.

(2) Federal funds and other funding as may be available are appropriated to the department for use in administering the provisions of this part.

History: En. Sec. 8, Ch. 649, L. 1989.

50-19-323. Coordination of programs. The department shall coordinate services under the MIAMI project with other services and programs in the state including:

(1) the early and periodic screening, diagnosis, and treatment services program under Title XIX of the federal Social Security Act;

(2) the Montana medicaid program established in 53-6-101;

(3) programs administered with funds under the federal Maternal and Child Health Services Block Grant Act, Public Law 97-35, as may be amended; and

(4) the services of fetal, infant, and child mortality teams as provided in part 4 of this chapter.

History: En. Sec. 9, Ch. 649, L. 1989; amd. Sec. 9, Ch. 519, L. 1997.

Part 4

Fetal, Infant, and Child Mortality Prevention Act

50-19-401. Short title. This part may be cited as the "Fetal, Infant, and Child Mortality Prevention Act".

History: En. Sec. 1, Ch. 519, L. 1997.

50-19-402. Statement of policy — access to information. (1) The prevention of fetal, infant, and child deaths is both the policy of the state of Montana and a community responsibility. Many community professionals have expertise that can be used to promote the health, safety, and welfare of fetuses, infants, and children. The use of these professionals in reviewing fetal, infant, and child deaths can lead to a greater understanding of the causes of death and the methods of preventing deaths. It is the intent of the legislature to encourage local communities to establish voluntary multidisciplinary fetal, infant, and child mortality review teams to study the incidence and causes of fetal, infant, and child deaths.

(2) A health care provider may disclose information about a patient without the patient's authorization or without the authorization of the representative of a patient who is deceased upon request of a local fetal, infant, and child mortality review team. The review team may request and may receive information from a county attorney as provided in 44-5-303(4) and from a health care provider as provided in 50-16-525 after the review team has considered whether the disclosure of the information by the provider satisfies the criteria provided in 50-16-529(6). The review team shall maintain the confidentiality of the information received.

(3) The local fetal, infant, and child mortality review team may only:

(a) compile statistics of fetal, infant, and child mortality;

(b) analyze the preventable causes of fetal, infant, and child deaths, including child abuse and neglect; and

(c) recommend measures to prevent future fetal, infant, and child deaths.

History: **En. Sec. 2, Ch. 519, L. 1997.**

Cross-References

Child abuse and neglect, Title 41, ch. 3, part 1.

Sudden infant death syndrome, 50-15-411, 50-15-412.

Health care information, Title 50, ch. 16.

50-19-403. Local fetal, infant, and child mortality review team. (1) A local fetal, infant, and child mortality review team must be approved by the county health department. Approval must be given if:

(a) the county health department has designated a lead person for the purposes of management of the review team;

(b) at least five of the individuals listed in subsection (2) have agreed to serve on the review team; and

(c) the five individuals have developed a plan that includes, at a minimum, operating policies of the review team covering collection and destruction of information obtained pursuant to 44-5-303(4) or 50-19-402(2).

(2) If a local fetal, infant, and child mortality review team is established, the team must be multidisciplinary and may include only:

(a) the county attorney or a designee;

(b) a law enforcement officer;

(c) the medical examiner or coroner for the jurisdiction;

(d) a physician;

(e) a school district representative;

(f) a representative of the local health department;

(g) a representative of the department of public health and human services;

(h) a forensic pathologist;

(i) a pediatrician;

(j) a family practice physician;

(k) an obstetrician;
(l) a nurse practitioner;
(m) a public health nurse;
(n) a mental health professional;
(o) a local trauma coordinator;
(p) a representative, appointed by the tribal government, of an Indian reservation that is located in whole or in part within the boundaries of the county;
(q) a representative of the bureau of Indian affairs or the Indian health service, or both, who is located within the county; and
(r) representatives of the following:
(i) local emergency medical services;
(ii) a local hospital;
(iii) a local hospital medical records department;
(iv) a local fire department; and
(v) the local registrar.

History: **En. Sec. 3, Ch. 519, L. 1997.**

50-19-404. Records — confidentiality. Material and information obtained by a local fetal, infant, and child mortality review team are not subject to disclosure under the public records law. Material and information obtained by a local fetal, infant, and child mortality review team are not subject to subpoena unless the material and information are reviewed by a district court judge and ordered to be provided to the person seeking access.

History: **En. Sec. 4, Ch. 519, L. 1997.**

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Public records, Title 2, ch. 6.

50-19-405. Unauthorized disclosure by review team member — civil penalty. A person aggrieved by the use of information obtained pursuant to 50-19-402(2) for a purpose not authorized by 50-19-402(3) or by a disclosure of that information in violation of 50-19-402(2) by a member of a local fetal, infant, and child mortality review team may bring a civil action in the district court of the county of the person's residence for damages, costs, and fees as provided in 50-16-553(6) through (8).

History: **En. Sec. 5, Ch. 519, L. 1997.**

Cross-References

Costs, Title 25, ch. 10.

Damages, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

50-19-406. Unauthorized disclosure by review team member — misdemeanor. A member of a local fetal, infant, and child mortality review team who knowingly uses information obtained pursuant to 50-19-402(2) for a purpose not authorized by 50-19-402(3) or who discloses that information in violation of 50-19-402(2) is guilty of a misdemeanor and upon conviction is punishable as provided in 50-16-551.

History: **En. Sec. 6, Ch. 519, L. 1997.**

Part 5
Breastfeeding

50-19-501. Nursing mother and infant protection. (1) The Montana legislature finds that breastfeeding a baby is an important and basic act of nurturing that must be protected in the interests of maternal and child health and family values. A mother has a right to breastfeed the mother's child in any location, public or private, where the mother and child are otherwise authorized to be present, irrespective of whether or not the mother's breast is covered during or incidental to the breastfeeding.

(2) A unit of local government may not prohibit breastfeeding in public by local ordinance.

(3) The act of breastfeeding may not be considered:

(a) a nuisance as provided in Title 27, chapter 30;

(b) indecent exposure as provided for in 45-5-504;

(c) sexual conduct as defined in 45-5-620(1)(f); or

(d) obscenity as provided for in 45-8-201.

History: En. Sec. 1, Ch. 299, L. 1999.

Compiler's Comments

Effective Date: This section is effective October 1, 1999.

CHAPTER 20
ABORTION

Part 1 — Montana Abortion Control Act

50-20-101. Short title.
50-20-102. Statement of purpose — findings.
50-20-103. Legislative intent.
50-20-104. Definitions.
50-20-105. Duties of department.
50-20-106. Informed consent.
50-20-107. Repealed.
50-20-108. Protection of premature infants born alive.
50-20-109. Control of practice of abortion.
50-20-110. Reporting of practice of abortion.
50-20-111. Right to refuse participation in abortion.
50-20-112. Penalties.

Part 2 — Parental Notice of Abortion Act

50-20-201. Short title.
50-20-202. Legislative purpose and findings.
50-20-203. Definitions.
50-20-204. Notice of parent required.
50-20-205. Alternate notification.
50-20-206 and 50-20-207 reserved.
50-20-208. Exceptions.
50-20-209. Coercion prohibited.
50-20-210 reserved.
50-20-211. Reports.
50-20-212. Procedure for judicial waiver of notice.
50-20-213 and 50-20-214 reserved.
50-20-215. Criminal and civil penalties.

Part 3 — Woman's Right to Know

50-20-301. Short title.
50-20-302. Legislative purpose and findings.
50-20-303. Definitions.
50-20-304. Publication of materials.
50-20-305. Emergency.
50-20-306. Physician reporting requirements — penalty — action — department report.
50-20-307. Civil remedies.
50-20-308. Protection of privacy in court proceedings.

Part 4 — Miscellaneous Abortion Laws

50-20-401. Offense of partial-birth abortion — exception — definitions — penalties.

Part 1
Montana Abortion Control Act

Part Cross-References

Rights of unborn, 41-1-103.

50-20-101. Short title. This chapter shall be known and may be cited as the "Montana Abortion Control Act".

History: En. 94-5-613 by Sec. 1, Ch. 284, L. 1974; R.C.M. 1947, 94-5-613.

50-20-102. Statement of purpose — findings. (1) The legislature reaffirms the tradition of the state of Montana to protect every human life, whether unborn or aged, healthy or sick. In keeping with this tradition and in the spirit of our constitution, we reaffirm the intent to extend the protection of the laws of Montana in favor of all human life. It is the policy of the state to preserve and protect the lives of all human beings and to provide protection for the viable human life. The protection afforded to a person by Montana's constitutional right of privacy is not absolute, but may be infringed upon by a compelling state interest. The legislature finds that a compelling state interest exists in the protection of viable life.

(2) The legislature finds, with respect to 50-20-401, that:

(a) the United States supreme court has determined that states have a legitimate interest in protecting both a woman's health and the potentiality of human life and that each interest grows and reaches a compelling point at various stages of a woman's approach to the full term of a pregnancy;

(b) the court has also determined that subsequent to viability, the state in promoting its interest in the potentiality of human life may, if it chooses, regulate and even proscribe abortion except when necessary, in appropriate medical judgment, for the preservation of the life or health of the woman;

(c) the holdings referred to in subsections (2)(a) and (2)(b) apply to unborn persons in order to extend to unborn persons the inalienable right to defend their lives and liberties;

(d) absent clear proof that an abortion is necessary to save the life of the woman, the abortion of a viable person is an infringement of that person's rights; and

(e) the state has a duty to protect innocent life and that duty has grown to a compelling point with respect to partial-birth abortion.

History: En. 94-5-614 by Sec. 2, Ch. 284, L. 1974; R.C.M. 1947, 94-5-614; amd. Sec. 1, Ch. 479, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 479 in (1) inserted third through fifth sentences regarding policy findings of a compelling state interest; and inserted (2) establishing legislative findings regarding abortion. Amendment effective October 1, 1999.

50-20-103. Legislative intent. It is the intent of the legislature to restrict abortion to the extent permissible under decisions of appropriate courts or paramount legislation.

History: En. 94-5-623 by Sec. 11, Ch. 284, L. 1974; R.C.M. 1947, 94-5-623.

50-20-104. Definitions. As used in this chapter, the following definitions apply:

(1) "Abortion" means the use or prescription of any instrument, medicine, drug, or other substance or device to intentionally terminate the pregnancy of a woman known to be pregnant, with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus.

(2) "Attempted abortion" or "attempted" means an act or an omission of a statutorily required act that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance of an abortion in violation of this chapter.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Facility" means a hospital, health care facility, physician's office, or other place in which an abortion is performed.

(5) "Informed consent" means voluntary consent to an abortion by the woman upon whom the abortion is to be performed only after full disclosure to the woman by:

(a) the physician who is to perform the abortion of the following information:

(i) the particular medical risks associated with the particular abortion procedure to be employed, including, when medically accurate, the risks of infection, hemorrhage, breast cancer, danger to subsequent pregnancies, and infertility;

(ii) the probable gestational age of the unborn child at the time the abortion is to be performed; and

(iii) the medical risks of carrying the child to term;

(b) the physician or an agent of the physician:

(i) that medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

(ii) that the father is liable to assist in the support of the child, even in instances in which the father has offered to pay for the abortion; and

(iii) that the woman has the right to review the printed materials described in 50-20-304; and

(c) the physician or the agent that the printed materials described in 50-20-304 have been provided by the department and that the materials describe the unborn child and list agencies that offer alternatives to abortion.

(6) "Viability" means the ability of a fetus to live outside the mother's womb, albeit with artificial aid.

History: **En. 94-5-615 by Sec. 3, Ch. 284, L. 1974; amd. Sec. 38, Ch. 187, L. 1977; R.C.M. 1947, 94-5-615(part); amd. Sec. 122, Ch. 418, L. 1995; amd. Sec. 299, Ch. 546, L. 1995; amd. Sec. 9, Ch. 566, L. 1995.**

50-20-105. Duties of department. (1) The department shall make regulations to provide for the humane disposition of dead infants or fetuses.

(2) The department shall make regulations for a comprehensive system of reporting of maternal deaths and complications within the state resulting directly or indirectly from abortion, subject to the provisions of 50-20-110(5).

(3) The department shall report to the attorney general any apparent violation of this chapter.

History: **(1)En. 94-5-617 by Sec. 5, Ch. 284, L. 1974; amd. Sec. 13, Ch. 338, L. 1977; Sec. 94-5-617, R.C.M. 1947; (2)En. 94-5-621 by Sec. 9, Ch. 284, L. 1974; Sec. 94-5-621, R.C.M. 1947; (3)En. 94-5-619 by Sec. 7, Ch. 284, L. 1974; Sec. 94-5-619, R.C.M. 1947; R.C.M. 1947, 94-5-617(4), 94-5-619(6), 94-5-621.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duties of Attorney General, 2-15-501.

50-20-106. Informed consent. (1) An abortion may not be performed without the informed consent of the woman upon whom the abortion is to be performed. The informed consent must be received at least 24 hours prior to the abortion and certified prior to or at the time of the abortion.

(2) Informed consent must be certified by a written statement in a form prescribed by the department and signed by the physician and the woman upon whom the abortion is to be performed in which the physician certifies that the physician has made the full disclosure provided in 50-20-104(5) and in which the woman upon whom the abortion is to be performed acknowledges that the disclosures have been made to the woman and that the woman voluntarily consents to the abortion.

(3) If a woman chooses to review the written materials described in 50-20-304, the materials must be provided to her at least 24 hours before the abortion or be mailed to the woman by certified mail, with delivery restricted to the addressee, at least 72 hours before the abortion.

(4) The information required in 50-20-104(5)(a) may be provided by telephone without conducting a physical examination or tests of the patient. The information may be based on facts supplied to the physician by the woman and other relevant information that is reasonably available to the physician. The information may not be provided by a tape recording but must be provided during a consultation in which the physician is able to ask questions of the woman and the woman is able to ask questions of the physician. If a physical examination, tests, or the availability of other information subsequently indicates, in the medical judgment of the physician, a revision of information previously provided to the patient, the revised information may be communicated to the patient at any time prior to the performance of the abortion.

(5) The information required in 50-20-104(5)(b) may be provided by a tape recording if provision is made to record or otherwise register specifically whether the woman does or does not choose to review the printed materials.

(6) The informed consent or consent provided for in this section is not required if a licensed physician certifies that the abortion is necessary because of a medical emergency as defined in 50-20-303.

(7) An executive officer, administrative agency, or public employee of the state or of any local governmental body may not issue any order requiring an abortion or coerce any woman to have an abortion. A person may not coerce any woman to have an abortion.

(8) Violation of subsections (1) through (7) is a misdemeanor.

History: (1), (3) thru (5)En. 94-5-616 by Sec. 4, Ch. 284, L. 1974; Sec. 94-5-616, R.C.M. 1947; (2)En. 94-5-615 by Sec. 3, Ch. 284, L. 1974; amd. Sec. 38, Ch. 187, L. 1977; Sec. 94-5-615, R.C.M. 1947; R.C.M. 1947, 94-5-615(part), 94-5-616(part); amd. Sec. 10, Ch. 566, L. 1995.

Cross-References

Penalty for misdemeanor, 50-20-112.

50-20-107. Repealed. Sec. 13, Ch. 469, L. 1995.

History: En. 94-5-616 by Sec. 4, Ch. 284, L. 1974; R.C.M. 1947, 94-5-616(part).

50-20-108. Protection of premature infants born alive. (1) A person commits an offense, as defined in 45-5-102 through 45-5-104, if he purposely, knowingly, or negligently causes the death of a premature infant born alive, if such infant is viable.

(2) Whenever a premature infant which is the subject of abortion is born alive and is viable, it becomes a dependent and neglected child subject to the provisions of state law, unless:

(a) the termination of the pregnancy is necessary to preserve the life of the mother; or

(b) the mother and her spouse or either of them have agreed in writing in advance of the abortion or within 72 hours thereafter to accept the parental rights and responsibilities of the premature infant if it survives the abortion procedure.

(3) No person may use any premature infant born alive for any type of scientific research or other kind of experimentation except as necessary to protect or preserve the life and health of such premature infant born alive.

(4) Violation of subsection (3) of this section is a felony.

History: En. 94-5-617 by Sec. 5, Ch. 284, L. 1974; amd. Sec. 13, Ch. 338, L. 1977; R.C.M. 1947, 94-5-617(1) thru (3), (5); amd. Sec. 9, Ch. 610, L. 1987.

Cross-References

Child abuse, neglect, and dependency, Title 41, ch. 3.

Penalty for felony, 50-20-112.

50-20-109. Control of practice of abortion. (1) Except as provided in 50-20-401, an abortion may not be performed within the state of Montana:

(a) except by a licensed physician;

(b) after viability of the fetus, except as provided in subsection (2).

(2) An abortion under subsection (1)(b) may be performed only to preserve the life or health of the mother and only if:

(a) the judgment of the physician who is to perform the abortion is first certified in writing by the physician, setting forth in detail the facts relied upon in making the judgment; and

(b) two other licensed physicians have first examined the patient and concurred in writing with the judgment. The certification and concurrence in this subsection (2)(b) are not required if a licensed physician certifies that the abortion is necessary to preserve the life of the mother.

(3) The timing and procedure used in performing an abortion under subsection (1)(b) must be such that the viability of the fetus is not intentionally or negligently endangered, as the term "negligently" is defined in 45-2-101. The fetus may be intentionally endangered or destroyed only if necessary to preserve the life or health of the mother.

(4) For purposes of this section, "health" means the prevention of a risk of substantial and irreversible impairment of a major bodily function.

(5) The utilization plan of a physician assistant-certified may not provide for performing abortions.

(6) Violation of subsections (1) through (3) and (5) is a felony.

History: En. 94-5-618 by Sec. 6, Ch. 284, L. 1974; amd. Sec. 20, Ch. 359, L. 1977; R.C.M. 1947, 94-5-618; amd. Sec. 7, Ch. 485, L. 1981; amd. Sec. 2, Ch. 321, L. 1995; amd. Sec. 11, Ch. 354, L. 1995; amd. Sec. 2, Ch. 314, L. 1997; amd. Sec. 2, Ch. 479, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 479 deleted former (1)(b) that read: "(b) after the first 3 months of pregnancy, except in a hospital licensed by the department"; in (1)(b) after "fetus" substituted "except as provided in subsection (2)" for "unless in appropriate medical judgment, the abortion is necessary to preserve the life or health of the mother"; in (2) at end after "performed" inserted "only to preserve the life or health of the mother and only"; deleted former (4) that read: "(4) A physician, facility, or other person or agency may not engage in solicitation, advertising, or other form of communication that has the purpose of inviting, inducing, or attracting a person to come to the physician, facility, or other person or agency to have an abortion or to purchase abortifacients"; inserted (4) defining health; in (6) at end deleted former second sentence that read: "Violation of subsection (4) is a misdemeanor"; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Freedom of speech and expression, Art. II, sec. 7, Mont. Const.

Licensing of physicians, Title 37, ch. 3, part 3.

Penalty for felony and for misdemeanor, 50-20-112.

50-20-110. Reporting of practice of abortion. (1) Every facility in which an abortion is performed within the state shall keep on file upon a form prescribed by the department a statement dated and certified by the physician who performed the abortion setting forth such information with respect to the abortion as the department by regulation shall require, including but not limited to information on prior pregnancies, the medical procedure employed to administer the abortion, the gestational age of the fetus, the vital signs of the fetus after abortion, if any, and if after viability, the medical procedures employed to protect and preserve the life and health of the fetus.

(2) The physician performing an abortion shall cause such pathology studies to be made in connection therewith as the department shall require by regulation, and the facility shall keep the reports thereof on file.

(3) In connection with an abortion, the facility shall keep on file the original of each of the documents required by this chapter relating to informed consent, consent to abortion, certification of necessity of abortion to preserve the life or health of the mother, and certification of necessity of abortion to preserve the life of the mother.

(4) Such facility shall, within 30 days after the abortion, file with the department a report upon a form prescribed by the department and certified by the custodian of the records or physician in charge of such facility setting forth all of the information required in subsections (1), (2), and (3) of this

section, except such information as would identify any individual involved with the abortion. The report shall exclude copies of any documents required to be filed by subsection (3) of this section, but shall certify that such documents were duly executed and are on file.

(5) All reports and documents required by this chapter shall be treated with the confidentiality afforded to medical records, subject to such disclosure as is permitted by law. Statistical data not identifying any individual involved in an abortion shall be made public by the department annually, and the report required by subsection (4) of this section to be filed with the department shall be available for public inspection except insofar as it identifies any individual involved in an abortion. Names and identities of persons submitting to abortion shall remain confidential among medical and medical support personnel directly involved in the abortion and among persons working in the facility where the abortion was performed whose duties include billing the patient or submitting claims to an insurance company, keeping facility records, or processing abortion data required by state law.

(6) Violation of this section is a misdemeanor and is punishable as provided in 46-18-212.

History: En. 94-5-619 by Sec. 7, Ch. 284, L. 1974; R.C.M. 1947, 94-5-619(1) thru (5); amd. Sec. 10, Ch. 228, L. 1981.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Confidentiality of health care information, Title 50, ch. 16, part 5.

50-20-111. Right to refuse participation in abortion. (1) No private hospital or health care facility shall be required contrary to the religious or moral tenets or the stated religious beliefs or moral convictions of its staff or governing board to admit any person for the purpose of abortion or to permit the use of its facilities for such purpose. Such refusal shall not give rise to liability of such hospital or health care facility or any personnel or agent or governing board thereof to any person for damages allegedly arising from such refusal or be the basis for any discriminatory, disciplinary, or other recriminatory action against such hospital or health care facility or any personnel, agent, or governing board thereof.

(2) All persons shall have the right to refuse to advise concerning, perform, assist, or participate in abortion because of religious beliefs or moral convictions. If requested by any hospital or health care facility or person desiring an abortion, such refusal shall be in writing signed by the person refusing, but may refer generally to the grounds of "religious beliefs and moral convictions". The refusal of any person to advise concerning, perform, assist, or participate in abortion shall not be a consideration in respect of staff privileges of any hospital or health care facility or a basis for any discriminatory, disciplinary, or other recriminatory action against such person, nor shall such person be liable to any person for damages allegedly arising from refusal.

(3) It shall be unlawful to interfere or attempt to interfere with the right of refusal authorized by this section. The person injured thereby shall be entitled to injunctive relief, when appropriate, and shall further be entitled to monetary damages for injuries suffered.

(4) Such refusal by any hospital or health care facility or person shall not be grounds for loss of any privileges or immunities to which the granting of consent may otherwise be a condition precedent or for the loss of any public benefits.

(5) As used in this section, the term "person" includes one or more individuals, partnerships, associations, and corporations.

History: En. 94-5-620 by Sec. 8, Ch. 284, L. 1974; R.C.M. 1947, 94-5-620.

Cross-References

Freedom of religion, Art. II, sec. 5, Mont. Const.

Right to refuse participation in sterilization, Title 50, ch. 5, part 5.

50-20-112. Penalties. (1) A person convicted of deliberate, mitigated, or negligent homicide under this chapter is subject to the penalties prescribed by 45-5-102 through 45-5-104.

(2) A person convicted of a felony other than deliberate, mitigated, or negligent homicide under this chapter is subject to a fine not to exceed $1,000, imprisonment in the state prison for a term not to exceed 5 years, or both.

(3) A person convicted of a misdemeanor under this chapter is subject to a fine not to exceed $500, imprisonment in the county jail for a term not to exceed 6 months, or both.

(4) (a) A penalty may not be imposed against the woman upon whom the abortion is performed or attempted to be performed.

(b) A penalty may not be imposed for failure to comply with the provision of 50-20-106 that requires a written certification that the woman has been informed of the opportunity to review the information referred to in 50-20-304 if the department has not made the written materials available at the time that the physician or the physician's agent is required to inform the woman of the right to review the materials.

History: En. 94-5-622 by Sec. 10, Ch. 284, L. 1974; amd. Sec. 14, Ch. 338, L. 1977; R.C.M. 1947, 94-5-622; amd. Sec. 10, Ch. 610, L. 1987; amd. Sec. 11, Ch. 566, L. 1995.

Part 2

Parental Notice of Abortion Act

50-20-201. Short title. This part may be cited as the "Parental Notice of Abortion Act".

History: En. Sec. 1, Ch. 469, L. 1995.

50-20-202. Legislative purpose and findings. (1) The legislature finds that:

(a) immature minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences;

(b) the medical, emotional, and psychological consequences of abortion are sometimes serious and can be lasting, particularly when the patient is immature;

(c) the capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an abortion are not necessarily related;

(d) parents ordinarily possess information essential to a physician in the exercise of the physician's best medical judgment concerning the minor;

(e) parents who are aware that their minor daughter has had an abortion may better ensure that the daughter receives adequate medical care after the abortion; and

(f) parental consultation is usually desirable and in the best interests of the minor.

(2) The purpose of this part is to further the important and compelling state interests of:

(a) protecting minors against their own immaturity;

(b) fostering family unity and preserving the family as a viable social unit;

(c) protecting the constitutional rights of parents to rear children who are members of their household; and

(d) reducing teenage pregnancy and unnecessary abortion.

History: En. Sec. 2, Ch. 469, L. 1995.

50-20-203. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Actual notice" means the giving of notice directly in person or by telephone.

(2) "Coercion" means restraining or dominating the choice of a minor female by force, threat of force, or deprivation of food and shelter.

(3) "Emancipated minor" means a person under 18 years of age who is or has been married or who has been granted an order of limited emancipation by a court as provided in 41-3-406.

(4) "Incompetent person" means a person who is an incapacitated person or a protected person who has had a guardian appointed pursuant to Title 72, chapter 5.

(5) "Medical emergency" means a condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of the woman's pregnancy to avert the woman's death or a condition for which a delay in treatment will create serious risk of substantial and irreversible impairment of a major bodily function.

(6) "Minor" means a female under 18 years of age who is not an emancipated minor.

(7) "Physical abuse" means any physical injury intentionally inflicted by a parent or legal guardian on a child.

(8) "Physician" means a person licensed to practice medicine under Title 37, chapter 3.

(9) "Sexual abuse" has the meaning given in 41-3-102.

History: En. Sec. 3, Ch. 469, L. 1995.

50-20-204. Notice of parent required. A physician may not perform an abortion upon a minor or an incompetent person unless the physician has given at least 48 hours' actual notice to one parent or to the legal guardian of the pregnant minor or incompetent person of the physician's intention to perform the abortion. The actual notice may be given by a referring physician. The physician who performs the abortion must receive the written statement of the referring physician certifying that the referring physician has given actual notice. If actual notice is not possible after a reasonable effort, the physician or the physician's agent shall give alternate notice as provided in 50-20-205.

History: **En. Sec. 4, Ch. 469, L. 1995.**

50-20-205. Alternate notification. In lieu of the actual notice required by 50-20-204, notice may be made by certified mail addressed to the parent at the usual place of residence of the parent with return receipt requested and delivery restricted to the addressee, which means a postal employee may deliver the mail only to the authorized addressee. Time of delivery is considered to occur at noon on the next day on which regular mail delivery takes place after mailing.

History: **En. Sec. 5, Ch. 469, L. 1995.**

50-20-206 and 50-20-207 reserved.

50-20-208. Exceptions. Notice is not required under 50-20-204 or 50-20-205 if:

(1) the attending physician certifies in the patient's medical record that a medical emergency exists and there is insufficient time to provide notice;

(2) notice is waived, in writing, by the person entitled to notice; or

(3) notice is waived under 50-20-212.

History: **En. Sec. 6, Ch. 469, L. 1995.**

50-20-209. Coercion prohibited. A parent, a guardian, or any other person may not coerce a minor to have an abortion. If a minor is denied financial support by the minor's parents, guardian, or custodian because of the minor's refusal to have an abortion, the minor must be considered an emancipated minor for the purposes of eligibility for public assistance benefits. The public assistance benefits may not be used to obtain an abortion.

History: **En. Sec. 7, Ch. 469, L. 1995.**

50-20-210 reserved.

50-20-211. Reports. A monthly report indicating the number of notices issued under this part and the number of times in which exceptions were made to the notice requirement under 50-20-208, as well as the type of exceptions, must be filed with the department of public health and human services on forms prescribed by the department. Patient names and other identifying information may not be used on the forms. The department shall prepare and make available to the public on an annual basis a compilation of the data reported.

History: **En. Sec. 8, Ch. 469, L. 1995.**

50-20-212. Procedure for judicial waiver of notice. (1) The requirements and procedures under this section are available to minors and incompetent persons whether or not they are residents of this state.

(2) (a) The minor or incompetent person may petition the youth court for a waiver of the notice requirement and may participate in the proceedings on the person's own behalf. The petition must include a statement that the petitioner is pregnant and is not emancipated. The court may appoint a guardian ad litem for the petitioner. A guardian ad litem is required to maintain the confidentiality of the proceedings. The youth court shall advise the petitioner of the right to court-appointed counsel and shall provide the petitioner with counsel upon request.

(b) If the petition filed under subsection (2)(a) alleges abuse as a basis for waiver of notice, the youth court shall treat the petition as a report under

41-3-202. The provisions of Title 41, chapter 3, part 2, apply to an investigation conducted pursuant to this subsection.

(3) Proceedings under this section are confidential and must ensure the anonymity of the petitioner. All proceedings under this section must be sealed. The petitioner may file the petition using a pseudonym or using the petitioner's initials. All documents related to the petition are confidential and are not available to the public. The proceedings on the petition must be given preference over other pending matters to the extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings of fact and conclusions of law and rule within 48 hours of the time that the petition is filed unless the time is extended at the request of the petitioner. If the court fails to rule within 48 hours and the time is not extended, the petition is granted and the notice requirement is waived.

(4) If the court finds by clear and convincing evidence that the petitioner is sufficiently mature to decide whether to have an abortion, the court shall issue an order authorizing the minor to consent to the performance or inducement of an abortion without the notification of a parent or guardian.

(5) The court shall issue an order authorizing the petitioner to consent to an abortion without the notification of a parent or guardian if the court finds, by clear and convincing evidence, that:

(a) there is evidence of a pattern of physical, sexual, or emotional abuse of the petitioner by one or both parents, a guardian, or a custodian; or

(b) the notification of a parent or guardian is not in the best interests of the petitioner.

(6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss the petition.

(7) A court that conducts proceedings under this section shall issue written and specific findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence, findings, and conclusions be maintained.

(8) The supreme court may adopt rules providing an expedited confidential appeal by a petitioner if the youth court denies a petition. An order authorizing an abortion without notice is not subject to appeal.

(9) Filing fees may not be required of a pregnant minor who petitions a court for a waiver of parental notification or appeals a denial of a petition.

History: En. Sec. 9, Ch. 469, L. 1995.

50-20-213 and 50-20-214 reserved.

50-20-215. Criminal and civil penalties. (1) A person convicted of performing an abortion in violation of 50-20-204 or 50-20-205 shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(2) Failure to provide the notice required under 50-20-204 or 50-20-205 is prima facie evidence in an appropriate civil action for a violation of a professional obligation. The evidence does not apply to issues other than failure to notify the parents or guardian. A civil action may be based on a claim that the failure to notify was the result of a violation of the appropriate legal standard of care. Failure to provide notice is presumed to be actual malice

pursuant to the provisions of 27-1-221. This part does not limit the common-law rights of parents.

(3) A person who coerces a minor to have an abortion is guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. On a second or subsequent conviction, the person shall be fined an amount not less than $500 and not more than $50,000 and be imprisoned in the state prison for a term not less than 10 days and not more than 5 years, or both.

(4) A person not authorized to receive notice under 50-20-205 who signs a notice of waiver as provided in 50-20-208(2) is guilty of a misdemeanor.

History: En. Sec. 10, Ch. 469, L. 1995.

Part 3

Woman's Right to Know

50-20-301. Short title. This part may be cited as the "Woman's Right-to-Know Act".

History: En. Sec. 1, Ch. 566, L. 1995.

50-20-302. Legislative purpose and findings. (1) The legislature finds that:

(a) it is essential to the psychological and physical well-being of a woman who is considering an abortion that the woman receive complete and accurate information on alternatives;

(b) the knowledgeable exercise of a woman's decision to have an abortion depends on the extent to which the woman receives sufficient information to make an informed choice between the alternatives of giving birth and having an abortion;

(c) in most instances, the only contact with a physician that a woman who has an abortion has occurs simultaneously with the abortion procedure, with little opportunity to receive counseling concerning the decision;

(d) the decision to abort is an important and often stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences;

(e) the medical, emotional, and psychological consequences of an abortion are serious and can be lasting;

(f) some abortion facilities or providers offer only limited or impersonal counseling opportunities; and

(g) some abortion facilities or providers hire untrained and unprofessional counselors whose primary goal is to sell abortion services.

(2) Based on the findings in subsection (1), it is the purpose of this part to:

(a) ensure that every woman who is considering an abortion receive complete information on alternatives and that every woman submitting to an abortion do so only after giving informed consent to the abortion procedure;

(b) protect unborn children from a woman's uninformed decision to have an abortion; and

(c) reduce the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that the decision was not fully informed.

History: En. Sec. 2, Ch. 566, L. 1995.

50-20-303. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Medical emergency" means a condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of the woman's pregnancy to avert the woman's death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(2) "Physician" means a person licensed to practice medicine under Title 37, chapter 3.

(3) "Pregnant" or "pregnancy" means that female reproductive condition of having an unborn child in the woman's body.

(4) "Unborn child" means the offspring of human beings from conception until birth.

History: En. Sec. 3, Ch. 566, L. 1995.

50-20-304. Publication of materials. (1) The department shall publish and annually update easily comprehensible printed, unbiased materials that are geographically indexed and designed to inform women of public and private agencies and services available to assist a woman through pregnancy, during childbirth, and while a woman's child is dependent. The materials must:

(a) include adoption agencies;

(b) include a comprehensive list of the agencies, a description of the services offered, and the telephone numbers and addresses of the agencies;

(c) inform a woman about medical assistance benefits for prenatal care, childbirth, neonatal care, and child support obligations of a father of a child.

(2) The department shall ensure that the materials described in this section are comprehensive and do not directly or indirectly promote, exclude, or discourage the use of any agency or service. The materials must include a toll-free, 24-hour telephone number that may be called to orally obtain a list and description of agencies in the locality of the caller and of the services offered by the agencies.

(3) The materials must state that:

(a) it is unlawful for any individual to coerce a woman to undergo or not to undergo an abortion;

(b) a physician who performs an abortion on a woman without the woman's informed consent may be liable to the woman for damages in a civil action; and

(c) the law allows adoptive parents to pay the costs of prenatal care, childbirth, and neonatal care.

(4) The materials must inform the pregnant woman of the probable anatomical and physiological characteristics of the unborn child at 2-week gestational increments from fertilization to full term, including pictures or drawings representing the development of unborn children at 2-week gestational increments. The pictures or drawings must contain the dimensions of the unborn child and must be realistic. The materials must include any

relevant information on the possibility of the unborn child's survival at each stage depicted. The materials must be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages. The materials must contain objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each procedure, the possible detrimental psychological effects of abortion, the possible detrimental psychological effects of adoption, and the medical risks associated with carrying a child to term.

(5) The materials must be printed in a clearly legible typeface.

(6) The materials required to be produced under this section must be provided at no cost upon request and must be provided in appropriate quantities to any person, facility, or hospital.

History: En. Sec. 4, Ch. 566, L. 1995.

50-20-305. Emergency. When a medical emergency compels the performance of an abortion, the physician shall inform the woman, before the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert the woman's death or that a 24-hour delay will create serious risk of substantial and irreversible impairment of a major bodily function.

History: En. Sec. 5, Ch. 566, L. 1995.

50-20-306. Physician reporting requirements — penalty — action — department report. (1) Within 90 days after July 1, 1995, the department shall prepare a reporting form to be used by physicians that contains a reprint of this chapter and on which the physician shall list:

(a) the number of women to whom the physician provided the information described in 50-20-104(5)(a), including:

(i) the number of women provided the information by telephone and the number to whom it was provided in person; and

(ii) the number of women in each group referred to in subsection (1)(a)(i) to whom the physician provided the information in the capacity of a referring physician and the number to whom it was provided in the capacity of a physician who is to perform the abortion;

(b) the number of women to whom the physician or an agent of the physician provided the information described in 50-20-104(5)(b), including:

(i) the number of women to whom the physician provided the information by telephone and the number to whom it was provided in person;

(ii) the number of women in each group referred to in subsection (1)(b)(i) to whom the physician provided the information in the capacity of a referring physician and the number to whom it was provided in the capacity of a physician who is to perform the abortion; and

(iii) the number of women in each group referred to in subsection (1)(b)(ii) to whom information was provided by the physician and the number to whom it was provided by an agent of the physician;

(c) the number of women who availed themselves of the opportunity to obtain a copy of the printed information described in 50-20-304 and the number who did not;

(d) of each of the numbers described in subsections (1)(a) through (1)(c), the number who, to the best of the reporting physician's information and belief, obtained an abortion; and

(e) the number of abortions that were performed by the physician but in which information otherwise required to be provided at least 24 hours before the abortion was not provided because:

(i) an immediate abortion was necessary to avert the woman's death; or

(ii) a delay would create serious risk of substantial and irreversible impairment of a major bodily function.

(2) The department shall ensure that copies of the reporting forms described in subsection (1) are provided:

(a) by 120 days after July 1, 1995, to all physicians licensed in this state;

(b) to each physician licensed to practice after July 1, 1995, at the time of licensure;

(c) by December 1 of each succeeding year, to all physicians licensed to practice in this state.

(3) By February 28 of each year, each physician or the physician's agent who provided information to one or more women in accordance with 50-20-106 shall submit a copy of the reporting form described in subsection (1) to the department with the requested data entered accurately and completely.

(4) Reports that are not submitted by March 31 are subject to a penalty of $500 for each 30-day period that the reports are overdue. A physician who is required to report but who, more than 1 year after the due date, has not submitted a report or who has submitted an incomplete report may, in an action brought by the department, be directed by a district court to submit a complete report within a period stated in the court order or be subject to sanctions for civil contempt.

(5) By June 30 of each year, the department shall issue a public report providing statistics for the previous calendar year submitted in accordance with this section for each of the items listed in subsection (1). Each report must provide the statistics for all previous calendar years, adjusted to reflect information from late or corrected reports. The department shall ensure that none of the information included in the public reports could reasonably lead to the identification of an individual who was provided information in accordance with 50-20-106. The department shall design the reporting process to ensure that confidentiality regarding the physician or the physician's agent is maintained in the department records.

(6) The department may, by rule, alter the dates established by subsection (2)(c), (3), or (5) or consolidate the forms or reports described in this section with other forms or reports to achieve administrative convenience, achieve fiscal savings, or reduce the burden of reporting requirements. However, reporting forms must be sent to all licensed physicians at least once a year, and the report described in subsection (5) must be issued at least once a year.

History: En. Sec. 6, Ch. 566, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-20-307. Civil remedies. (1) A person who performs an abortion in knowing or reckless violation of this chapter may be liable for actual and punitive damages in an action brought by the woman upon whom an abortion was performed or, if the woman is under 18 years of age or is physically or mentally incapacitated for purposes of being able to decide whether to bring and pursue an action, then, on the woman's behalf, by either:

(a) the father of the unborn child who was the subject of the abortion; or

(b) the grandparent of an unborn child who was the subject of the abortion.

(2) A person who attempts to perform an abortion in knowing or reckless violation of this chapter may be liable for actual and punitive damages in an action brought by the woman upon whom an abortion was attempted.

(3) If the department fails to issue the public report required in 50-20-306, a group of 10 or more citizens may seek an injunction, in a court of competent jurisdiction, against the director of the department to require that a complete report be issued within a period established by court order. Failure to comply with an injunction subjects the director to sanctions for civil contempt.

(4) If judgment is rendered in favor of the plaintiff in any action described in this section, the court shall award reasonable attorney fees in favor of the plaintiff against the defendant.

(5) An abortion or attempted abortion performed in violation of this chapter is the basis for a professional disciplinary action under 37-1-316.

History: En. Sec. 7, Ch. 566, L. 1995.

Cross-References

Damages, Title 27, ch. 1, part 2.

Injunctions, Title 27, ch. 19.

50-20-308. Protection of privacy in court proceedings. In a civil or criminal proceeding under this chapter, the court shall determine whether the anonymity of a woman upon whom an abortion has been performed or attempted must be preserved from public disclosure, unless the woman waives anonymity. The court shall make a ruling and, upon determining that the woman's anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and the exclusion of individuals from the proceedings to the extent necessary to safeguard the woman's identity from public disclosure. Each order must be accompanied by specific written findings explaining why the anonymity of the woman should be preserved, why the order is necessary, how the order is tailored to protect the woman's privacy, and why no less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted, a person other than a public official who brings an action under 50-20-307(1) shall do so under a pseudonym.

History: En. Sec. 8, Ch. 566, L. 1995.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Part 4

Miscellaneous Abortion Laws

50-20-401. Offense of partial-birth abortion — exception — definitions — penalties. (1) Except as provided in this section, a person commits an offense if the person purposely, knowingly, or negligently causes a partial-birth abortion.

(2) Subsection (1) does not apply to:

(a) a partial-birth abortion caused to save the life of a woman because the woman's life is endangered by a physical disorder, illness, or injury, including a life-endangering condition caused by or arising from the pregnancy itself, if no other medical procedure would save the life of the woman; or

(b) the woman upon whom a partial-birth abortion is performed.

(3) As used in this section, the following definitions apply:

(a) "Knowingly" has the meaning provided in 45-2-101.

(b) "Negligently" has the meaning provided in 45-2-101.

(c) (i) "Partial-birth abortion" means an abortion in which the person performing the abortion partially vaginally delivers a living human fetus before killing the fetus and completing the delivery.

(ii) A procedure that constitutes a partial-birth abortion is one in which the following steps occur:

(A) the living fetus is removed intact from the uterus until only the head remains in the uterus;

(B) all or a part of the intracranial contents of the fetus are evacuated;

(C) the head of the fetus is compressed; and

(D) following fetal demise, the fetus is removed from the birth canal.

(d) "Purposely" has the meaning provided in 45-2-101.

(4) A person committing the offense provided for in subsection (1) is guilty of a felony and shall be punished by:

(a) a fine of not more than $50,000;

(b) imprisonment in a correctional facility for a term of not less than 5 years and not more than 10 years; or

(c) both fine and imprisonment as provided in subsections (4)(a) and (4)(b); and

(d) permanent revocation of the license of the physician performing the partial-birth abortion. The provisions of 37-1-203 and 37-1-205 do not apply to a physician whose license is revoked pursuant to this section.

History: **En. Sec. 1, Ch. 314, L. 1997; amd. Sec. 3, Ch. 479, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 479 inserted (3)(c)(ii) describing procedures that constitute partial-birth abortion; and made minor changes in style. Amendment effective October 1, 1999.

CHAPTER 21

CADAVERS AND AUTOPSIES

Part 1 — General Provisions

50-21-101. Procurement of cadavers.
50-21-102. Procedure to procure cadavers.
50-21-103. Limitations on right to perform autopsy or dissection.
50-21-104. Autopsies.
50-21-105. Morticians not affected.
50-21-106. Penalty for unauthorized postmortem examinations.

Part 1
General Provisions

Part Cross-References

Provisions relating to corpses, Title 44, ch. 3, part 4.

Uniform Anatomical Gift Act, Title 72, ch. 17.

50-21-101. Procurement of cadavers. Any medical school in the United States may procure unclaimed human bodies for use in teaching and demonstrations of anatomy.

History: En. Sec. 153, Ch. 197, L. 1967; R.C.M. 1947, 69-5101.

50-21-102. Procedure to procure cadavers. The procedure to procure a human body for use in teaching and demonstrations of anatomy is as follows:

(1) The medical school shall apply to the person or organization that has custody of the unclaimed body asking that the body be delivered to the school for teaching and demonstration of anatomy.

(2) The medical school shall file a notarized statement with the department of public health and human services showing that proper equipment is available for proper handling, security, and preservation of human bodies.

(3) The body must be kept at the unit, institution, or hospital for at least 3 weeks after the date of death before it can be used.

(4) The medical school shall pay the costs of special preparation and transportation of the body.

(5) A burial permit must accompany each body, and the medical school shall properly register the body and arrange for burial by a licensed mortician at the expense of the medical school.

(6) If there was no request by the deceased person that the deceased's body be buried immediately, the person or organization that has custody may deliver an unclaimed body to the medical school applying.

(7) The medical school shall file a statement with the department stating that the body will be used only for teaching and demonstration of anatomy.

History: En. Sec. 154, Ch. 197, L. 1967; amd. Sec. 105, Ch. 349, L. 1974; R.C.M. 1947, 69-5102; amd. Sec. 123, Ch. 418, L. 1995; amd. Sec. 300, Ch. 546, L. 1995.

Cross-References

Provisions relating to corpses, Title 44, ch. 3, part 4.

Burial permit, 50-15-405.

50-21-103. Limitations on right to perform autopsy or dissection. The right to perform an autopsy, dissect a human body, or make any postmortem examination involving dissection of any part of a body is limited to cases in which:

(1) specifically authorized by law;

(2) a coroner is authorized to hold an inquest and then only to the extent that the coroner may authorize dissection or autopsy;

(3) authorized by a written statement of the deceased, whether the statement is of a testamentary character or otherwise;

(4) authorized by the husband, wife, or next of kin responsible by law for burial to determine the cause of death and then only to the extent authorized;

(5) the decedent died in a hospital operated by the United States department of veterans affairs, Montana school for the deaf and blind, or an

institution in the department of corrections or the department of public health and human services, leaving no surviving husband, wife, or next of kin responsible by law for burial and the manager or superintendent of the hospital or institution where death occurred obtains authority on order of the district court to determine the cause of death and then only to the extent authorized by court order;

(6) the decedent died in the state, was a resident, but left no surviving husband, wife, or next of kin charged by law with the duty of burial and the attending physician obtains authority on order of the district court for the purpose of ascertaining the cause of death and then only to the extent authorized by court order after it has been shown that the physician made diligent search for the next of kin responsible by law for burial.

History: En. Sec. 155, Ch. 197, L. 1967; R.C.M. 1947, 69-5103; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 301, Ch. 546, L. 1995.

Cross-References

Office of County Coroner, Title 7, ch. 4, part 29.

Investigation of death — autopsy, Title 46, ch. 4, part 1.

50-21-104. Autopsies. All autopsies of a human body shall be performed by a physician legally authorized to practice medicine in this state. Upon completion, the physician shall send a written report of his findings, including the cause of death if determined, to the physician attending the person at the time of death if other than the physician performing the autopsy; upon the request of any such hospital or skilled nursing facility, to the hospital or skilled nursing facility where the person died or where he was confined during his last illness to be retained as part of the permanent record of the hospital or skilled nursing facility; to the next of kin of the decedent or the representative of the decedent's estate upon request, and to such other person lawfully requesting the report.

History: En. Sec. 156, Ch. 197, L. 1967; amd. Sec. 1, Ch. 158, L. 1973; R.C.M. 1947, 69-5104.

Cross-References

Licensing of physicians, Title 37, ch. 3, part 3.

Exemption from liability for autopsy, 44-3-401.

Investigation of death — autopsy, Title 46, ch. 4, part 1.

50-21-105. Morticians not affected. This chapter shall not restrict the right of a licensed mortician to dissect a human body for proper preparation of the body for burial, cremation, or other disposition provided by law.

History: En. Sec. 157, Ch. 197, L. 1967; R.C.M. 1947, 69-5105.

Cross-References

Licensing of morticians, Title 37, ch. 19, part 3.

50-21-106. Penalty for unauthorized postmortem examinations. Unless authorized by law, any person who performs an autopsy, dissection, or other postmortem examination or causes it to be made is guilty of a misdemeanor. Upon conviction he shall be punished by a fine not exceeding $500.

History: En. Sec. 158, Ch. 197, L. 1967; R.C.M. 1947, 69-5106.

Cross-References

Penalty for disturbing corpse, 44-3-404.

CHAPTER 22

DETERMINATION OF DEATH

Part 1 — General Provisions

50-22-101. Determination of death.

Part 1
General Provisions

50-22-101. Determination of death. An individual who has sustained either irreversible cessation of circulatory and respiratory functions or irreversible cessation of all functions of the entire brain, including the brainstem, is dead. A determination of death must be made in accordance with accepted medical standards.

History: En. 69-7201 by Sec. 1, Ch. 228, L. 1977; R.C.M. 1947, 69-7201; amd. Sec. 1, Ch. 86, L. 1983.

Cross-References

Montana Rights of the Terminally Ill Act, Title 50, ch. 9.

Uniform Anatomical Gift Act, Title 72, ch. 17.

CHAPTER 23

RABIES CONTROL

Part 1 — Restrictions on Possession of Wild Animals

50-23-101. Definitions.
50-23-102. Prohibition of possession of wild animals — exceptions.
50-23-103. Quarantine — destruction — testing.
50-23-104. Payment of expenses.
50-23-105. Authority to adopt rules.
50-23-106. Injunction — recovery of costs.

Part 1
Restrictions on Possession of Wild Animals

Part Cross-References

Ownership of wild animals, 70-2-111.

50-23-101. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Department of livestock" means the department of livestock provided for in Title 2, chapter 15, part 31.

(2) "Department of public health and human services" means the department of public health and human services provided for in 2-15-2201.

(3) "Person" means an individual, group of individuals, partnership, corporation, firm, or association.

(4) "Wild animal" means a skunk, fox, raccoon, or bat. Other species of normally nondomesticated animals known to be capable of transmitting rabies may be added to this list through the adoption of rules by the department of public health and human services, with the approval of the department of livestock.

History: **En. Sec. 1, Ch. 448, L. 1981; amd. Sec. 124, Ch. 418, L. 1995; amd. Sec. 302, Ch. 546, L. 1995.**

50-23-102. Prohibition of possession of wild animals — exceptions. No person may possess a wild animal unless he possessed it for at least 6 months prior to January 1, 1982, or it is used in a fur-bearing enterprise, contained in a zoological exhibition in such a manner that it may not come in physical contact with members of the public, or acquired by an educational institution for scientific research.

History: **En. Sec. 2, Ch. 448, L. 1981.**

Cross-References

Property rights in wild and fur-bearing animals, 70-2-111.

50-23-103. Quarantine — destruction — testing. (1) Whenever a person unlawfully possesses a wild animal, the department of public health and human services or the department of livestock may impound the animal and take any other action considered reasonable to protect public health.

(2) If a wild animal, whether unlawfully or lawfully in the possession of a person, has bitten or otherwise exposed a person to the possibility of contracting rabies, the animal may be impounded by the department of public health and human services, the department of livestock, or a local health officer and either quarantined or destroyed and the animal's brain may be tested for rabies.

(3) A lawfully possessed wild animal that is quarantined pursuant to subsection (2) and found not to be rabid must be returned to its owner.

History: **En. Sec. 3, Ch. 448, L. 1981; amd. Sec. 125, Ch. 418, L. 1995; amd. Sec. 303, Ch. 546, L. 1995.**

50-23-104. Payment of expenses. Expenses incurred by the state under 50-23-103 must be paid by the person from whom possession of the wild animal was taken.

History: **En. Sec. 4, Ch. 448, L. 1981.**

50-23-105. Authority to adopt rules. The department of public health and human services, with the approval of the department of livestock, may adopt rules necessary for the implementation and administration of this part.

History: **En. Sec. 5, Ch. 448, L. 1981; amd. Sec. 126, Ch. 418, L. 1995; amd. Sec. 304, Ch. 546, L. 1995.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-23-106. Injunction — recovery of costs. (1) In addition to any other remedies provided by law, the department of public health and human services or, upon the request of the department of public health and human services, an appropriate county attorney may file an action to enjoin a violation of this part or a rule adopted pursuant to it.

(2) The department of public health and human services or the county attorney, if either prevails in any action brought pursuant to subsection (1), is

entitled to recover from the other party the costs, expenses, and reasonable attorney fees incurred.

History: **En. Sec. 6, Ch. 448, L. 1981; amd. Sec. 127, Ch. 418, L. 1995; amd. Sec. 305, Ch. 546, L. 1995.**

Cross-References

Office of County Attorney, Title 7, ch. 4, part 27.

Costs, Title 25, ch. 10.

Injunctions, Title 27, ch. 19.

CHAPTERS 24 THROUGH 29

RESERVED

CHAPTER 30

CONSUMER PRODUCT SAFETY ACT

Part 1 — General Provisions

50-30-101. Short title.
50-30-102. Definitions.
50-30-103. Department authorized to adopt rules.
50-30-104. Department to develop accident prevention and health oriented education programs.
50-30-105. Publication of information by department.
50-30-106. Department to conduct investigations.
50-30-107. Powers and duties of department's agents.
50-30-108. Carriers to permit inspection.

Part 2 — Hazardous Substances

50-30-201. Hazardous substance defined.
50-30-202. Misbranded hazardous substance defined.
50-30-203. Banned hazardous substance defined.
50-30-204. Toxic defined.
50-30-205. Highly toxic defined.
50-30-206. Corrosive defined.
50-30-207. Irritant defined.
50-30-208. Strong sensitizer defined.
50-30-209. Extremely flammable, flammable, and combustible defined.
50-30-210. Radioactive substance defined.
50-30-211. Label defined.
50-30-212. Electrical hazards.
50-30-213. Mechanical hazards.
50-30-214. Thermal hazards.
50-30-215. Declaration of hazardous substance.
50-30-216. Additional labeling requirements.
50-30-217. Exemption from labeling requirements.
50-30-218. When labeling requirement complied with.
50-30-219. Ban of hazardous substance authorized.
50-30-220. Toys and other children's articles.

Part 3 — Prohibited Acts, Penalties, and Remedies

50-30-301. Prohibited acts.
50-30-302. Notice and hearing required prior to prosecution.
50-30-303. Department and county attorney to prosecute violations.
50-30-304. Penalty.
50-30-305. Exceptions to penalty.
50-30-306. Injunction authorized.

50-30-307. Detainer of misbranded or banned hazardous substance.

Chapter Cross-References

Warranty provisions under Uniform Commercial Code, 30-2-312 through 30-2-318.

Weights, measures, standards, and labeling, Title 30, ch. 12.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Hazardous waste management, Title 75, ch. 10, part 4.

Regulation of standards and sale of grain, seed, commercial feeds, and fertilizer — regulation of produce — inspection, grading, and packing of apples, Title 80, ch. 3 through 5, 9, 10.

Montana quality labels — regulation of poultry, eggs, and egg dealers — regulation of manufactured dairy products, Title 81, ch. 8, 20, 22.

Part 1
General Provisions

50-30-101. Short title. This chapter shall be cited as the "Montana Consumer Product Safety Act of 1975".

History: En. 69-7101 by Sec. 2, Ch. 394, L. 1975; R.C.M. 1947, 69-7101.

50-30-102. Definitions. In this chapter, the following definitions apply:

(1) "Commerce" means all commerce within this state and subject to the jurisdiction of this state and includes the operation of any business or service establishment.

(2) "Court" means, in 50-30-220, the district court for the first judicial district and, in 50-30-306 and 50-30-307, the district court in the district where the violation occurs.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Person" includes an individual, partnership, corporation, or association or its legal representative or agent.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(1) thru (3), (18); amd. Sec. 128, Ch. 418, L. 1995; amd. Sec. 306, Ch. 546, L. 1995.

50-30-103. Department authorized to adopt rules. (1) The authority to adopt rules for the efficient enforcement of this chapter is vested in the department.

(2) The department has the authority to adopt by reference without public hearing rules adopted under the Federal Hazardous Substances Act as amended.

History: En. 69-7109 by Sec. 9, Ch. 394, L. 1975; R.C.M. 1947, 69-7109.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-30-104. Department to develop accident prevention and health oriented education programs. The department, in cooperation with other state and federal agencies, shall develop and conduct appropriate accident prevention and health oriented educational programs. The educational programs shall inform the public of the hazards, proper handling and use, disposal, storage, and transportation of hazardous substances and the proper medical and first-aid procedures for accidents resulting from hazardous substances.

History: **En. 69-7112 by Sec. 12, Ch. 394, L. 1975; R.C.M. 1947, 69-7112.**

Cross-References

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

Department to conduct research and investigations on hazardous wastes and publish studies, 75-10-404.

50-30-105. Publication of information by department. (1) The department may cause to be published from time to time reports summarizing any judgments, research findings, decrees, or court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof.

(2) The department may also cause to be disseminated information regarding hazardous substances in situations involving imminent danger to health.

(3) Nothing in this section shall be construed to prohibit the department from collecting, reporting, and illustrating the results of the investigations of the department.

History: **En. 69-7113 by Sec. 13, Ch. 394, L. 1975; R.C.M. 1947, 69-7113.**

Cross-References

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

Department to conduct research and investigations on hazardous wastes and publish studies, 75-10-404.

50-30-106. Department to conduct investigations. (1) The department shall conduct investigations of reported accidental injuries, illnesses, and deaths resulting from the use or misuse of all hazardous substances, as defined by 50-30-201(1)(a), intended or suitable for use by the general public.

(2) Investigations shall evaluate the causative hazardous substance and circumstances of the accident for enforcement of this chapter.

(3) If the offending hazardous substance is a pesticide regulated by another agency under the federal Environmental Pesticide Control Act or the Montana Pesticides Act, the investigation shall yield recommendations to the appropriate regulating agency for appropriate action.

History: **En. 69-7110 by Sec. 10, Ch. 394, L. 1975; amd. Sec. 32, Ch. 187, L. 1977; R.C.M. 1947, 69-7110(3).**

Cross-References

Prohibition against revealing trade secret information gathered in departmental investigations, 50-30-301.

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

Department to conduct investigations on hazardous wastes, 75-10-404.

Montana Pesticides Act, Title 80, ch. 8.

50-30-107. Powers and duties of department's agents. (1) For enforcement of this chapter, officers or employees duly designated by the department, upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized to:

(a) enter at reasonable times a factory, warehouse, or establishment in which hazardous substances are manufactured, processed, packed, or held for introduction into commerce or are held after such introduction;

(b) enter a vehicle being used to transport or hold hazardous substances in commerce;

(c) inspect at reasonable times, within reasonable limits, and in a reasonable manner a factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, and labeling therein; and

(d) obtain samples of materials or packages or labeling thereof.

(2) If the officer or employee obtains a sample, prior to leaving the premises he shall pay or offer to pay the owner, operator, or agent in charge for the sample and give a receipt describing the samples obtained.

History: En. 69-7110 by Sec. 10, Ch. 394, L. 1975; amd. Sec. 32, Ch. 187, L. 1977; R.C.M. 1947, 69-7110(1), (2).

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

Prohibition against revealing trade secret information gathered in departmental investigations, 50-30-301.

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

50-30-108. Carriers to permit inspection. (1) For the purpose of enforcing the provisions of this chapter, carriers engaged in commerce and persons receiving hazardous substances in commerce or holding such hazardous substances so received shall, upon the request of an officer or employee duly designated by the department, permit such officer or employee at reasonable times to have access to and to copy all records showing the movement in commerce of any such hazardous substances, the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof.

(2) It is unlawful for any such carrier or person to fail to permit such access to and copying of any record so requested when such request is accompanied by a statement in writing specifying the nature or kind of such hazardous substance to which such request relates, provided that evidence obtained under this section is not used in a criminal prosecution of the person from whom obtained.

(3) Carriers are not subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of hazardous substances in the usual course of business as carriers.

History: En. 69-7111 by Sec. 11, Ch. 394, L. 1975; R.C.M. 1947, 69-7111.

Cross-References

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

Transportation of hazardous substances by railroads, 69-14-562.

Department to require recordkeeping by transporters of hazardous wastes, 75-10-405.

Part 2
Hazardous Substances

Part Cross-References

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

Montana Pesticides Act, Title 80, ch. 8.

50-30-201. Hazardous substance defined. (1) "Hazardous substance" means:

(a) a substance or mixture of substances which:

(i) is toxic;

(ii) is corrosive;

(iii) is an irritant;

(iv) is a strong sensitizer;

(v) is flammable or combustible; or

(vi) generates pressure through decomposition, heat, or other means if the substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children;

(b) substances which the department by rule finds under 50-30-215 meet the requirements of subsection (1)(a) of this section;

(c) a radioactive substance if, with respect to the substance as used in a particular class of article or as packaged, the department determines by rule that the substance is sufficiently hazardous to require labeling in accordance with this chapter in order to protect the public health; or

(d) a toy or other article intended for use by children which presents an electrical, mechanical, or thermal hazard as determined by the department by rule in accordance with 50-30-220.

(2) (a) The term "hazardous substance" does not apply to pesticides subject to the federal Pesticide Environmental Control Act or the Montana Pesticides Act, to foods, drugs, and cosmetics subject to the Montana Food, Drug, and Cosmetic Act, or to substances intended for use as fuels when stored in containers and used in the heating, cooking, or refrigeration system of a house.

(b) The term applies, however, to an article which is not itself a pesticide within the meaning of the federal Pesticide Environmental Control Act or the Montana Pesticide Act but which is a hazardous substance within the meaning of subsection (1) of this section by reason of bearing or containing a pesticide.

(c) The term also applies to pesticides whenever human health is directly affected from the use or misuse of pesticides requiring an accident investigation for the purpose of preparing recommendations to federal or state pesticide control agencies.

(3) The term "hazardous substance" does not include source material, special nuclear material, or byproduct material as defined in the Atomic Energy Act of 1954, as amended, and rules issued pursuant thereto by the atomic energy commission.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(4).

Cross-References

Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31.

Nuclear regulation, Title 50, ch. 79.

50-30-202. Misbranded hazardous substance defined. (1) "Misbranded hazardous substance" means a hazardous substance (including a toy or other article intended for use by children which is a hazardous substance or which bears or contains a hazardous substance in such a manner as to be susceptible of access by a child to whom the toy or other article is entrusted) intended or packaged in a form suitable for use by the public or by children which, except as otherwise provided under 50-30-216 or 50-30-217, fails to bear a label:

(a) which states conspicuously:

(i) the name and place of business of the manufacturer, packer, distributor, or seller;

(ii) the common or usual name or the chemical name (if there is not a common or usual name) of the hazardous substance or each component which contributes substantially to its hazard unless the department by rule permits or requires the use of a recognized generic name;

(iii) the signal word "danger" on substances which are extremely flammable, corrosive, or highly toxic;

(iv) the signal word on all other hazardous substances;

(v) an affirmative statement of the principal hazard or hazards, such as:

(A) "flammable";

(B) "combustible";

(C) "vapor harmful";

(D) "causes burns";

(E) "absorbed through skin"; or

(F) similar wording descriptive of the hazard;

(vi) precautionary measures describing the action to be followed or avoided, except when modified by a rule of the department under 50-30-216 or 50-30-217;

(vii) instruction, when necessary or appropriate, for first-aid treatment;

(viii) "poison" for any hazardous substance which is defined as "highly toxic" by 50-30-205; and

(ix) instructions for handling and storage of packages which require special care in handling or storage such as:

(A) "keep out of the reach of children" or its practical equivalent; or

(B) if the article is intended for use by children and is not a banned hazardous substance, adequate directions for the protection of children from the hazard; and

(b) on which a statement required under subsection (1)(a) of this section is located prominently and is in the English language in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the label.

(2) The reuse of a food, drug, or cosmetic container as a container for a hazardous substance shall be deemed to be an act which results in the hazardous substance being a misbranded hazardous substance. As used in this subsection, the terms "food", "drug", and "cosmetic" shall have the same meanings as in the Montana Food, Drug, and Cosmetic Act.

History: (1)En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; Sec. 69-7102, R.C.M. 1947; (2)En. 69-7104 by Sec. 4, Ch. 394, L. 1975; Sec. 69-7104, R.C.M. 1947; R.C.M. 1947, 69-7102(13), 69-7104(part).

Cross-References

Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31.

Agricultural seed labeling, Title 80, ch. 5, part 1.

50-30-203. Banned hazardous substance defined. (1) "Banned hazardous substance" means:

(a) a toy or other article intended for use by children which is a hazardous substance or which bears or contains a hazardous substance in such a manner as to be susceptible of access by a child to whom the toy or other article is entrusted; or

(b) a hazardous substance intended or packaged in a form suitable for use by the general public which the department by rule classifies as a banned hazardous substance on the basis of a finding that, notwithstanding such cautionary labeling as is or may be required under this chapter for that substance, the degree or nature of the hazard involved in the presence or use of the substance by the general public is such that the objective of the protection of the public health and safety can be adequately served only by keeping the substance, when so intended or packaged, out of the channels of commerce.

(2) The department by rule shall exempt from subsection (1)(a) of this section articles such as chemical sets which, by reason of their functional purpose, require the inclusion of the hazardous substance involved or necessarily present an electrical, mechanical, or thermal hazard and which bear labeling giving adequate directions and warnings for safe use and are intended for use by children who have attained sufficient maturity and may reasonably be expected to read and heed the directions and warnings.

(3) Proceedings for the issuance, amendment, or repeal of rules under subsections (1)(b) and (2) of this section shall be governed by the provisions of 50-30-219 and 50-30-220.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(14).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-30-204. Toxic defined. "Toxic" means a substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(5).

50-30-205. Highly toxic defined. (1) "Highly toxic" means a substance which falls within any of the following categories:

(a) produces death within 14 days in one-half or more of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams at a single dose of 50 milligrams or less per kilogram of body weight when orally administered;

(b) produces death within 14 days in one-half or more of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams when inhaled continuously for a period of 1 hour or less at an atmosphere concentration of 200 parts per million or less by volume of gas or vapor or 2 milligrams per liter or less by volume of mist or dust if that concentration is likely to be encountered by man when the substance is used in a reasonably foreseeable manner; or

(c) produces death within 14 days in one-half or more of a group of 10 or more rabbits tested in a dosage of 200 milligrams or less per kilogram of body weight when administered by continuous contact with the bare skin for 24 hours or less.

(2) If the department finds that available data on human experience with a substance indicates results different from those obtained on animals in the above-named dosages or concentrations, the human data shall take precedence.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(6).

50-30-206. Corrosive defined. "Corrosive" means a substance which in contact with living tissue will cause destruction of tissue by chemical action but does not refer to action on inanimate surfaces.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(7).

50-30-207. Irritant defined. "Irritant" means a substance not corrosive within the meaning of 50-30-206 which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(8).

50-30-208. Strong sensitizer defined. "Strong sensitizer" means a substance which will cause on normal living tissue, through an allergic or photodynamic process, a hypersensitivity.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(9).

50-30-209. Extremely flammable, flammable, and combustible defined. (1) "Extremely flammable" applies to a substance which has a flash point at or below 20 degrees F, as determined by the Tagliabue open cup tester.

(2) "Flammable" applies to a substance which has a flash point above 20 degrees to and including 80 degrees F, as determined by the Tagliabue open cup tester.

(3) "Combustible" applies to a substance which has a flash point above 80 degrees to and including 150 degrees F, as determined by the Tagliabue open cup tester.

(4) The flammability or combustibility of solids and the contents of self-pressurized containers shall be determined by methods found by the department to be generally applicable to the materials or containers, respectively, and established by rules issued by the department, which rules shall also define the terms "flammable", "combustible", and "extremely flammable" in accord with the methods used.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(10).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-30-210. Radioactive substance defined. "Radioactive substance" means a substance which emits ionizing radiation.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(11).

Cross-References

Nuclear regulation, Title 50, ch. 79.

50-30-211. Label defined. "Label" means a display of written, printed, or graphic matter upon the immediate container ("immediate container" does not include package liners) of a substance or, in the case of an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly upon the article involved or upon a tag or other suitable material affixed thereto.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(part (12)).

Cross-References

Labeling of flour, 30-12-302.

Agricultural seed labeling, Title 80, ch. 5, part 1.

Montana quality label, Title 81, ch. 8, part 7.

50-30-212. Electrical hazards. An article may be determined to present an electrical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture may cause personal injury or illness by electric shock.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(15).

50-30-213. Mechanical hazards. An article may be determined to present a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness:

(1) from fracture, fragmentation, or disassembly of the article;
(2) from propulsion of the article (or a part or accessory thereof);
(3) from points or other protrusions, surfaces, edges, openings, or closures;
(4) from moving parts;
(5) from lack or insufficiency of controls to reduce or stop motion;
(6) as a result of self-adhering characteristics of the article;
(7) because the article (or a part or accessory thereof) may be aspirated or ingested;
(8) because of instability; or
(9) because of any other aspect of the article's design or manufacture.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(16).

50-30-214. Thermal hazards. An article may be determined to present a thermal hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances, or surfaces.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(17).

50-30-215. Declaration of hazardous substance. When in the judgment of the department such action will promote the objectives of this chapter by avoiding or resolving uncertainty as to its application, the department may by rule declare to be a hazardous substance a substance or mixture of substances which the department finds meets the requirements of 50-30-201(1)(a).

History: En. 69-7103 by Sec. 3, Ch. 394, L. 1975; amd. Sec. 28, Ch. 187, L. 1977; R.C.M. 1947, 69-7103(1).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-30-216. Additional labeling requirements. If the department finds that the requirements of 50-30-202(1)(a) are not adequate for the protection of the public health and safety in view of the special hazard presented by a hazardous substance, the department may by rule establish such reasonable variations or additional labeling requirements as are necessary for the protection of the public health and safety, and a hazardous substance intended or packaged in a form suitable for use by the general public or by children which fails to bear a label in accordance with the rules is a misbranded hazardous substance.

History: En. 69-7103 by Sec. 3, Ch. 394, L. 1975; amd. Sec. 28, Ch. 187, L. 1977; R.C.M. 1947, 69-7103(2).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Agricultural seed labeling, Title 80, ch. 5, part 1.

50-30-217. Exemption from labeling requirements. If the department finds that because of the size of the package involved, because of the minor hazard presented by the substance contained therein, or for other good and sufficient reasons full compliance with the labeling requirements otherwise applicable under this chapter is impracticable or is not necessary for the adequate protection of the public health and safety, the department shall adopt rules exempting the substance from these requirements to the extent of being consistent with adequate protection of the public health and safety.

History: En. 69-7103 by Sec. 3, Ch. 394, L. 1975; amd. Sec. 28, Ch. 187, L. 1977; R.C.M. 1947, 69-7103(3).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-30-218. When labeling requirement complied with. A requirement made by or under authority of this chapter that a word, statement, or other information appear on the label shall not be considered to be complied with unless the word, statement, or other information also appears:

(1) on the outside container or wrapper, if any, unless it is easily legible through the outside container or wrapper; and

(2) on all accompanying literature where there are directions for use, written or otherwise.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(part (12)).

50-30-219. Ban of hazardous substance authorized. If the department finds that the hazard of an article subject to this chapter is such that labeling adequate to protect the public health and safety cannot be devised or the article presents an imminent danger to the public health and safety, the department may declare the article a banned hazardous substance and require its removal from commerce.

History: En. 69-7103 by Sec. 3, Ch. 394, L. 1975; amd. Sec. 28, Ch. 187, L. 1977; R.C.M. 1947, 69-7103(4).

Cross-References

Banned hazardous substance defined, 50-30-203.

50-30-220. Toys and other children's articles. (1) A determination by the department that a toy or other article intended for use by children presents an electrical, mechanical, or thermal hazard shall be made by rule in accordance with this chapter.

(2) If, before or during a proceeding under subsection (1) of this section, the department finds that because of an electrical, mechanical, or thermal hazard distribution of a toy or other article involved presents an imminent hazard to the public health and the department gives notice of the finding, the toy or other article is a banned hazardous substance for purposes of this chapter until the proceeding has been completed. If not yet initiated when the notice is given, the proceeding shall be initiated as promptly as possible.

(3) (a) In the case of a toy or other article intended for use by children which is determined by the department to present an electrical, mechanical, or thermal hazard, a person who will be adversely affected by the determination may, at any time before the 60th day after the rule making the determination is issued by the department, file a petition with the court for a judicial review of the determination. A copy of the petition shall be immediately transmitted by the clerk of the court to the department. The department shall file in the court the record of the proceedings on which the department based its determination.

(b) If the petitioner applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there was no opportunity to adduce the evidence in the proceeding before the department, the court may order the additional evidence (and evidence in rebuttal thereof) to be taken before the department in a hearing or in another manner and upon other terms and conditions as the court considers proper. The department may modify its findings as to the facts or make new findings by reason of the additional evidence so taken, and it shall file the modified or new findings and its recommendation, if any, for the modification or setting aside of its original determination with the return of the additional evidence.

(c) Upon the filing of the petition under subsection (3) of this section, the court has jurisdiction to review the determination of the department. If the court ordered additional evidence to be taken under subsection (3)(b) of this section, the court shall also review the department's determination to determine if, on the basis of the entire record before the court under subsections (3)(a) and (3)(b) of this section, it is supported by substantial evidence. If the court finds the determination is not so supported, the court may set it aside. With respect to a determination reviewed under subsection (3) of this section, the court may grant appropriate relief pending conclusion of the review proceedings.

History: **En. 69-7103 by Sec. 3, Ch. 394, L. 1975; amd. Sec. 28, Ch. 187, L. 1977; R.C.M. 1947, 69-7103(5).**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Electrical hazard, 50-30-212.

Mechanical hazard, 50-30-213.

Thermal hazard, 50-30-214.

Part 3
Prohibited Acts, Penalties, and Remedies

50-30-301. Prohibited acts. The following acts and the causing thereof are prohibited:

(1) the introduction or delivery for introduction into commerce of any misbranded hazardous substance or banned hazardous substance;

(2) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label of or the doing of any other act with respect to a hazardous substance if such act is done while the substance is in commerce or while the substance is held for sale (whether or not the first sale) after shipment in commerce and results in the hazardous substance being a misbranded hazardous substance or a banned hazardous substance;

(3) the receipt in commerce of any misbranded hazardous substance or banned hazardous substance and the delivery or proffered delivery thereof for pay or otherwise;

(4) the giving of a guarantee or undertaking referred to in 50-30-305(2), which guarantee or undertaking is false, except by a person who relies upon a guarantee or undertaking to the same effect signed by and containing the name and address of the person residing in the United States from whom he received in good faith the hazardous substance;

(5) the failure to permit entry or inspection as authorized by 50-30-107(1) or to permit access to any copying of any record as authorized by 50-30-108;

(6) the introduction or delivery for introduction into commerce or the receipt in commerce and subsequent delivery or proffered delivery for pay or otherwise of a hazardous substance in a reused food, drug, or cosmetic container or in a container which, though not a reused container, is identifiable as a food, drug, or cosmetic container by its labeling or by other identification;

(7) the use by any person to his own advantage or revealing other than to the department or officers or employees of the agency or to the courts when relevant in any judicial proceeding under this chapter of any information acquired under authority of 50-30-106 and 50-30-107 concerning any method or process which as a trade secret is entitled to protection.

History: En. 69-7104 by Sec. 4, Ch. 394, L. 1975; R.C.M. 1947, 69-7104(part); amd. Sec. 7, Ch. 37, L. 1979.

Cross-References

Actual and constructive fraud, 28-2-404 through 28-2-406.

Misbranded hazardous substance defined, 50-30-202.

Banned hazardous substance defined, 50-30-203.

50-30-302. Notice and hearing required prior to prosecution. Before a violation of this chapter is reported to a county attorney for the institution of a criminal proceeding, the person against whom the proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the department, either orally or in writing and either in person or by attorney, with regard to the contemplated proceeding.

History: En. 69-7108 by Sec. 8, Ch. 394, L. 1975; amd. Sec. 31, Ch. 187, L. 1977; R.C.M. 1947, 69-7108(part).

Cross-References

Contested case defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Office of County Attorney, Title 7, ch. 4, part 27.

50-30-303. Department and county attorney to prosecute violations. It is the duty of the department or the county attorney to whom the department reports a violation of this chapter to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

History: En. 69-7108 by Sec. 8, Ch. 394, L. 1975; amd. Sec. 31, Ch. 187, L. 1977; R.C.M. 1947, 69-7108(part).

Cross-References

Duties of County Attorney relating to state matters, 7-4-2716.

50-30-304. Penalty. A person who violates the provisions of 50-30-301 is guilty of a misdemeanor and shall be fined no more than $500 or be imprisoned for any term not to exceed 90 days, or both. For offenses committed with intent to defraud or mislead or for second and subsequent offenses, the penalty shall be imprisonment for any term not to exceed 1 year or a fine of no more than $3,000, or both.

History: En. 69-7105 by Sec. 5, Ch. 394, L. 1975; amd. Sec. 29, Ch. 187, L. 1977; R.C.M. 1947, 69-7105(1).

Cross-References

Liability for damages for deceit, 27-1-712.

50-30-305. Exceptions to penalty. No person is subject to the penalties of 50-30-304:

(1) for having violated 50-30-301(3) if the receipt, delivery, or proffered delivery of the hazardous substance was made in good faith unless he refuses to furnish on request of an officer or employee duly designated by the department the name and address of the person from whom he purchased or received the hazardous substance and copies of all documents pertaining to the delivery of the hazardous substance to him; or

(2) for having violated 50-30-301(1) if he establishes a guarantee or undertaking signed by and containing the name and address of the person residing in the United States from whom he received in good faith the hazardous substance to the effect that the hazardous substance is not a misbranded or banned hazardous substance within the meaning of those terms in this chapter.

History: En. 69-7105 by Sec. 5, Ch. 394, L. 1975; amd. Sec. 29, Ch. 187, L. 1977; R.C.M. 1947, 69-7105(2).

Cross-References

Misbranded hazardous substance defined, 50-30-202.

Banned hazardous substance defined, 50-30-203.

50-30-306. Injunction authorized. In addition to the remedies hereinafter provided, the department is authorized to apply to court for and such court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction restraining any person from violating any provision of 50-30-301, irrespective of whether or not there exists an adequate remedy at law.

History: En. 69-7106 by Sec. 6, Ch. 394, L. 1975; R.C.M. 1947, 69-7106.

Cross-References

Injunctions, Title 27, ch. 19.

50-30-307. Detainer of misbranded or banned hazardous substance. (1) If a duly authorized agent of the department finds or has probable cause to believe that a hazardous substance is misbranded or is a banned hazardous substance within the meaning of this chapter, he shall affix to the article a tag or other appropriate marking giving notice that the article is or is suspected of being misbranded or is a banned hazardous substance and has been detained or embargoed and warning all persons not to remove or dispose of the article by sale or otherwise until permission for removal or disposal is given by the agent or the court. It is unlawful for a person to remove or dispose of a detained or embargoed article by sale or otherwise without permission.

(2) If an article detained or embargoed under subsection (1) is found by the agent to be misbranded or a banned hazardous substance, he shall petition the judge of the city, justice's, or district court in whose jurisdiction the article is detained or embargoed for an order of condemnation of the article. If the agent finds that an article so detained or embargoed is not misbranded or a banned hazardous substance, he shall remove the tag or other marking.

(3) (a) If the court finds that a detained or embargoed article is misbranded or a banned hazardous substance, the article shall, after entry of the decree, be destroyed at the expense of the claimant thereof under supervision of the agent, and all court costs and fees and storage and other proper expenses are to be taxed against the claimant of the article or his agent.

(b) If the misbranding can be corrected by proper labeling of the article, the court, after entry of the decree and after the costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that the article will be so labeled, has been executed, may by order direct that the article be delivered to the claimant thereof for the labeling under the supervision of an agent of the department. The expense of the supervision shall be paid by the claimant. The article shall be returned to the claimant on the representation to the court by the department that the article is no longer in violation of this chapter and that the expenses of the supervision have been paid.

History: En. 69-7107 by Sec. 7, Ch. 394, L. 1975; amd. Sec. 30, Ch. 187, L. 1977; R.C.M. 1947, 69-7107.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Justices' Courts jurisdiction, Title 3, ch. 10, part 3.

City Court jurisdiction, Title 3, ch. 11, part 1.

CHAPTER 31

MONTANA FOOD, DRUG, AND COSMETIC ACT

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Chapter Cross-References

Control of food and other commodities during emergency, 10-3-505.

Warranty provisions under Uniform Commercial Code, 30-2-312 through 30-2-318.

Weights, measures, standards, and labeling, Title 30, ch. 12.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Regulation of standards and sale of grain, seed, commercial feeds, and fertilizer — regulation of produce — inspection, grading, and packing of apples, Title 80, ch. 3 through 5, 9, 10.

Montana quality labels — regulation of poultry, eggs, and egg dealers — regulation of manufactured dairy products, Title 81, ch. 8, 20, 22.

Part 1

General Provisions

50-31-101. Short title. This chapter may be cited as the "Montana Food, Drug, and Cosmetic Act".

History: En. Sec. 1, Ch. 307, L. 1967; R.C.M. 1947, 27-701.

50-31-102. Applicability of chapter. The provisions of this chapter regarding the selling of food, drugs, devices, or cosmetics shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of these articles for sale; the sale, dispensing, and giving of these articles; and the supplying or applying of these articles in the conduct of a food, drug, or cosmetic establishment.

History: En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; R.C.M. 1947, 27-702(q).

50-31-103. *(Temporary)* **Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advertisement" means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing or that are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(2) "Approved source" means water from a spring, artesian well, drilled well, municipal water supply, or other source that has been found by the department to be of a safe and sanitary quality.

(3) "Artesian water" means water that is forced from below the ground toward the surface through a well by natural underground pressure.

(4) "Beef patty mix" means "hamburger" or "ground beef" to which have been added binders or extenders as those terms are understood by general custom and usage in the food industry.

(5) "Bottled water" means carbonated, demineralized, distilled, fluoridated, mineral, purified, sparkling, or other water that is from an approved source and that is disinfected and placed in a sealed container or package for human consumption.

(6) "Carbonated water" or "sparkling water" means water that contains carbon dioxide.

(7) "Color" includes black, white, and intermediate grays.

(8) (a) "Color additive" means a material that:

(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or that is extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

(ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or through reaction with another substance) of imparting color to the human body.

(b) The term does not include material that has been or is exempted under the federal act.

(9) "Consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and regulations pursuant to the federal act. The term does not include:

(a) any tobacco or tobacco product;

(b) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136, et seq.) or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151 through 157), commonly known as the Virus-Serum-Toxin Act;

(c) a drug subject to 50-31-306(1)(m) or 50-31-307(2)(c) or section 503(b)(1) or 506 of the federal act (21 U.S.C. 353(b)(1) and 356);

(d) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. 201, et seq.); or

(e) a commodity subject to the Federal Seed Act (7 U.S.C. 1551 through 1610).

(10) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from foreign or injurious contaminations.

(11) "Cosmetic" means:

(a) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(b) articles intended for use as a component of these articles, except that the term does not include soap.

(12) "Counterfeit drug" means a drug, drug container, or drug label that, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug and that falsely purports or is represented to be the product of or to have been packed or distributed by the other drug manufacturer, processor, packer, or distributor.

(13) "Demineralized water" means water that has been demineralized by distillation, deionization, reverse osmosis, or other methods and that contains not more than 10 parts per million total solids.

(14) "Department" means the department of public health and human services provided for in 2-15-2201.

(15) "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3), and 50-31-501(10)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals;

(b) to affect the structure or function of the body of humans or other animals.

(16) "Distilled water" means purified water that has been vaporized and condensed.

(17) "Drinking water" means water that has undergone purification, distillation, demineralization, mineralization, activated carbon or particulate filtration, fluoridation, carbonation, or other similar process or has undergone minimum treatment consisting of ozonization or an acceptable disinfection process.

(18) "Drug" means:

(a) articles recognized in the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these;

(b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals;

(c) articles (other than food) intended to affect the structure or function of the body of humans or other animals;

(d) articles intended for use as components of any article specified in subsection (18)(a), (18)(b), or (18)(c) but does not include devices or their components, parts, or accessories.

(19) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301, et seq.).

(20) "Fluoridated water" means water that contains, naturally or by addition, fluoride ions in quantities of not less than 0.7 and not more than 1.4 milligrams per liter and that complies with the food and drug administration quality standards set forth in 21 CFR 103.35.

(21) "Food" means:

(a) articles used for food or drink for humans or other animals;

(b) chewing gum; and

(c) articles used for components of these articles.

(22) (a) "Food additive" means a substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and including a source of radiation intended for this use), if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use.

(b) The term does not include:

(i) a pesticide chemical in or on a raw agricultural commodity;

(ii) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity;

(iii) a color additive;

(iv) a substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act (21 U.S.C. 451, et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 603, et seq.).

(23) "Food service establishment" means a restaurant, catering vehicle, vending machine, delicatessen, fast-food retailer, or any other place that serves food to the public for consumption, either at or away from the point of service, and any facility operated by a governmental entity where food is served.

(24) "Hamburger" or "ground beef" means ground fresh or frozen beef or a combination of both fresh and frozen beef, with or without the addition of suet, to which no water, binders, or extenders are added. There are four grades of hamburger or ground beef:

(a) "regular hamburger" or "regular ground beef" may have:

(i) a fat content no greater than the federal standard set forth in 9 CFR 319.15; and

(ii) a lean content of no less than 70%;

(b) "lean hamburger" or "lean ground beef" may have:

(i) a fat content no greater than 22%; and

(ii) a lean content of no less than 78%;

(c) "extra lean hamburger" or "extra lean ground beef" may have:

(i) a fat content no greater than 16%; and

(ii) a lean content of no less than 84%; and

(d) "super lean hamburger" or "super lean ground beef" may have:

(i) a fat content no greater than 12%; and

(ii) a lean content of no less than 88%.

(25) "Honey" means the nectar and saccharine plant exudations, gathered, modified, and stored in the comb by honey bees, that are levorotatory and that contain not more than 25% of water, not more than 0.25% of ash, and not more than 8% sucrose.

(26) "Label" means a display of written, printed, or graphic matter on the immediate container of an article. "Immediate container" does not include package liners.

(27) "Labeling" means labels and other written, printed, or graphic matter:

(a) on an article or its containers or wrappers;

(b) accompanying the article.

(28) "Menu" means a list presented to the patron that states the food items for sale in a food service establishment.

(29) "Mineral water" means water that contains more than 500 parts per million total dissolved mineral solids.

(30) "New drug" means a drug, the composition of which is such that:

(a) it is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling; or

(b) the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, has become so recognized but that has not, other than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

(31) "Official compendium" means the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these.

(32) "Organic food" means food that conforms to the definition in 50-31-222.

(33) (a) "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers.

(b) The term does not include:

(i) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

(ii) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

(34) "Person" includes an individual, partnership, corporation, and association.

(35) "Pesticide chemical" means a substance that alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136, et seq.), as amended, and that is used in the production, storage, or transportation of raw agricultural commodities.

(36) "Placard" means a nonpermanent sign used to display or describe food items for sale in a food service establishment or retail establishment.

(37) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(38) "Processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, freezing, or otherwise manufacturing a food or changing the physical characteristics of a food, and the enclosure of the food in a package.

(39) "Purified water" means water that is produced by distillation, deionization, reverse osmosis, or other method and that meets the definition of purified water in the 20th edition of the Pharmacopoeia of the United States of America, 1980.

(40) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(41) "Retail establishment" means a commercial establishment at which meat or meat products are displayed for sale or provision to the public, with or without charge.

(42) "Spring water" means water that originates in an underground formation and flows naturally, without external force or vacuum, to a natural orifice in the surface of the earth.

(43) "Synthetically compounded" means a product formulated by a process that chemically changes a material or substance extracted from naturally

occurring plant, animal, or mineral sources, except for microbiological processes.

(44) "Water-bottling plant" means a facility in which bottled water is produced.

(45) "Well water" means water that:

(a) is taken from below the ground through a piping device or similar installed device using external force or vacuum;

(b) is not modified in its mineral content; and

(c) may have undergone minimum treatment consisting of ozonization or an acceptable disinfection process.

50-31-103. *(Effective on occurrence of contingency)* **Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advertisement" means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing or that are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(2) "Approved source" means water from a spring, artesian well, drilled well, municipal water supply, or other source that has been found by the department to be of a safe and sanitary quality.

(3) "Artesian water" means water that is forced from below the ground toward the surface through a well by natural underground pressure.

(4) "Beef patty mix" means "hamburger" or "ground beef" to which have been added binders or extenders as those terms are understood by general custom and usage in the food industry.

(5) "Bottled water" means carbonated, demineralized, distilled, fluoridated, mineral, purified, sparkling, or other water that is from an approved source and that is disinfected and placed in a sealed container or package for human consumption.

(6) "Carbonated water" or "sparkling water" means water that contains carbon dioxide.

(7) "Color" includes black, white, and intermediate grays.

(8) (a) "Color additive" means a material that:

(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or that is extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

(ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or through reaction with another substance) of imparting color to the human body.

(b) The term does not include material that has been or is exempted under the federal act.

(9) "Consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and regulations pursuant to the federal act. The term does not include:

(a) any tobacco or tobacco product;

(b) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136, et seq.) or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151 through 157), commonly known as the Virus-Serum-Toxin Act;

(c) a drug subject to 50-31-306(1)(m) or 50-31-307(2)(c) or section 503(b)(1) or 506 of the federal act (21 U.S.C. 353(b)(1) and 356);

(d) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. 201, et seq.); or

(e) a commodity subject to the Federal Seed Act (7 U.S.C. 1551 through 1610).

(10) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from foreign or injurious contaminations.

(11) "Cosmetic" means:

(a) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(b) articles intended for use as a component of these articles, except that the term does not include soap.

(12) "Counterfeit drug" means a drug, drug container, or drug label that, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug and that falsely purports or is represented to be the product of or to have been packed or distributed by the other drug manufacturer, processor, packer, or distributor.

(13) "Demineralized water" means water that has been demineralized by distillation, deionization, reverse osmosis, or other methods and that contains not more than 10 parts per million total solids.

(14) "Department" means the department of public health and human services provided for in 2-15-2201.

(15) "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3), and 50-31-501(10)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals;

(b) to affect the structure or function of the body of humans or other animals.

(16) "Distilled water" means purified water that has been vaporized and condensed.

(17) "Drinking water" means water that has undergone purification, distillation, demineralization, mineralization, activated carbon or particulate filtration, fluoridation, carbonation, or other similar process or has undergone minimum treatment consisting of ozonization or an acceptable disinfection process.

(18) "Drug" means:

(a) articles recognized in the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these;

(b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals;

(c) articles (other than food) intended to affect the structure or function of the body of humans or other animals;

(d) articles intended for use as components of any article specified in subsection (18)(a), (18)(b), or (18)(c) but does not include devices or their components, parts, or accessories.

(19) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301, et seq.).

(20) "Fluoridated water" means water that contains, naturally or by addition, fluoride ions in quantities of not less than 0.7 and not more than 1.4 milligrams per liter and that complies with the food and drug administration quality standards set forth in 21 CFR 103.35.

(21) "Food" means:

(a) articles used for food or drink for humans or other animals;

(b) chewing gum; and

(c) articles used for components of these articles.

(22) (a) "Food additive" means a substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and including a source of radiation intended for this use), if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use.

(b) The term does not include:

(i) a pesticide chemical in or on a raw agricultural commodity;

(ii) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity;

(iii) a color additive;

(iv) a substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act (21 U.S.C. 451, et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 603, et seq.).

(23) "Food service establishment" means a restaurant, catering vehicle, vending machine, delicatessen, fast-food retailer, or any other place that serves food to the public for consumption, either at or away from the point of service, and any facility operated by a governmental entity where food is served.

(24) "Hamburger" or "ground beef" means ground fresh or frozen beef or a combination of both fresh and frozen beef, with or without the addition of suet, to which no water, binders, or extenders are added. There are four grades of hamburger or ground beef:

(a) "regular hamburger" or "regular ground beef" may have:

(i) a fat content no greater than the federal standard set forth in 9 CFR 319.15; and

(ii) a lean content of no less than 70%;

(b) "lean hamburger" or "lean ground beef" may have:

(i) a fat content no greater than 22%; and

(ii) a lean content of no less than 78%;

(c) "extra lean hamburger" or "extra lean ground beef" may have:

(i) a fat content no greater than 16%; and

(ii) a lean content of no less than 84%; and

(d) "super lean hamburger" or "super lean ground beef" may have:

(i) a fat content no greater than 12%; and

(ii) a lean content of no less than 88%.

(25) "Honey" means the nectar and saccharine plant exudations, gathered, modified, and stored in the comb by honey bees, that are levorotatory and that contain not more than 25% of water, not more than 0.25% of ash, and not more than 8% sucrose.

(26) "Label" means a display of written, printed, or graphic matter on the immediate container of an article. "Immediate container" does not include package liners.

(27) "Labeling" means labels and other written, printed, or graphic matter:

(a) on an article or its containers or wrappers;

(b) accompanying the article.

(28) "Menu" means a list presented to the patron that states the food items for sale in a food service establishment.

(29) "Mineral water" means water that contains more than 500 parts per million total dissolved mineral solids.

(30) "New drug" means a drug, the composition of which is such that:

(a) it is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling; or

(b) the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, has become so recognized but that has not, other than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

(31) "Official compendium" means the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these.

(32) (a) "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers.

(b) The term does not include:

(i) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

(ii) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

(33) "Person" includes an individual, partnership, corporation, and association.

(34) "Pesticide chemical" means a substance that alone, in chemical combination, or in formulation with one or more other substances is an

"economic poison" under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136, et seq.), as amended, and that is used in the production, storage, or transportation of raw agricultural commodities.

(35) "Placard" means a nonpermanent sign used to display or describe food items for sale in a food service establishment or retail establishment.

(36) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(37) "Processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, freezing, or otherwise manufacturing a food or changing the physical characteristics of a food, and the enclosure of the food in a package.

(38) "Purified water" means water that is produced by distillation, deionization, reverse osmosis, or other method and that meets the definition of purified water in the 20th edition of the Pharmacopoeia of the United States of America, 1980.

(39) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(40) "Retail establishment" means a commercial establishment at which meat or meat products are displayed for sale or provision to the public, with or without charge.

(41) "Spring water" means water that originates in an underground formation and flows naturally, without external force or vacuum, to a natural orifice in the surface of the earth.

(42) "Synthetically compounded" means a product formulated by a process that chemically changes a material or substance extracted from naturally occurring plant, animal, or mineral sources, except for microbiological processes.

(43) "Water-bottling plant" means a facility in which bottled water is produced.

(44) "Well water" means water that:

(a) is taken from below the ground through a piping device or similar installed device using external force or vacuum;

(b) is not modified in its mineral content; and

(c) may have undergone minimum treatment consisting of ozonization or an acceptable disinfection process.

History: En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; R.C.M. 1947, 27-702(part); amd. Sec. 8, Ch. 37, L. 1979; amd. Sec. 1, Ch. 456, L. 1979; amd. Sec. 1, Ch. 361, L. 1981; amd. Sec. 1, Ch. 605, L. 1985; amd. Sec. 1, Ch. 169, L. 1989; amd. Sec. 4, Ch. 472, L. 1989; amd. Sec. 1, Ch. 133, L. 1991; amd. Sec. 129, Ch. 418, L. 1995; amd. Sec. 307, Ch. 546, L. 1995; amd. Sec. 210, Ch. 42, L. 1997; amd. Sec. 3, Ch. 172, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 172 deleted former definition of organic food that read: ""Organic food" means food that conforms to the definition in 50-31-222"; and made minor changes in style. Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 7(2), Ch. 172, L. 1999, provided that this section is effective upon the implementation of a state organic certification program pursuant to 80-11-601(3).

50-31-104. Department authorized to adopt rules. (1) The department may adopt rules for the efficient enforcement of this chapter. The department may adopt by reference the regulations adopted by the food and drug administration under the federal act and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.).

(2) No hearing is required for adoption by reference of those regulations adopted under the federal act and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.).

History: En. Sec. 21, Ch. 307, L. 1967; amd. Sec. 3, Ch. 171, L. 1971; amd. Sec. 4, Ch. 349, L. 1974; R.C.M. 1947, 27-721.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-31-105. Publication of information by department. (1) The department may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof.

(2) The department may also cause to be disseminated such information regarding food, drugs, devices, and cosmetics as the department deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the department from collecting, reporting, and illustrating the results of the investigations of the department.

History: En. Sec. 23, Ch. 307, L. 1967; R.C.M. 1947, 27-723.

50-31-106. Inspections and taking of samples authorized. (1) The department or its authorized agents have free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into commerce or to any vehicle being used to transport or hold the foods, drugs, devices, or cosmetics in commerce, for the purpose of:

(a) inspecting the factory, warehouse, establishment, or vehicle to determine if any of the provisions of this chapter are being violated; and

(b) securing samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay for the sample.

(2) The department shall make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this chapter is being violated.

History: En. Sec. 22, Ch. 307, L. 1967; amd. Sec. 3, Ch. 187, L. 1977; R.C.M. 1947, 27-722.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

Refusal to allow entry or inspection prohibited, 50-31-501.

50-31-107. False or misleading representations. (1) An advertisement of a food, drug, device, or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(2) If an article is alleged to be misbranded because the labeling is misleading or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading there

shall be taken into account not only representations made or suggested by statement, word, design, device, sound, or a combination of these but also the extent to which the labeling or advertisement fails to reveal facts material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement or under conditions of use as are customary or usual.

History: (1)En. Sec. 20, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 27-720, R.C.M. 1947; (2)En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; Sec. 27-702, R.C.M. 1947; R.C.M. 1947, 27-702(1), 27-720(a).

Cross-References

Freedom of speech and expression, Art. II, sec. 7, Mont. Const.

Specific drug advertisements considered false, 50-31-303.

50-31-108. Regulations concerning additives. (1) The department, upon its own motion or upon the petition of any interested party requesting that such a regulation be established, whenever public health or other considerations in the state so require, is authorized to adopt, amend, or repeal regulations, whether or not in accordance with regulations promulgated under the federal act, prescribing tolerances for any added poisonous or deleterious substances for food additives, for pesticide chemicals in or on raw agricultural commodities, or for color additives, including but not limited to zero tolerances and exemptions from tolerances in the case of pesticide chemicals in or on raw agricultural commodities and prescribing the conditions under which a food additive or a color additive may be safely used and exemptions where such food additive or color additive is to be used solely for investigational or experimental purposes.

(2) It shall be incumbent upon such petitioner to establish by data submitted to the department that a necessity exists for such regulation and that its effect will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the department to determine whether such regulation should be promulgated, the department may require additional data to be submitted and failure to comply with the request shall be sufficient grounds to deny the request.

(3) In adopting, amending, or repealing regulations relating to such substances the department shall consider among other relevant factors the following which the petitioner, if any, shall furnish:

(a) the name and all pertinent information concerning such substance including, where available, its chemical identity and composition, a statement of the conditions of the proposed use, including directions, recommendations, and suggestions and including specimens of proposed labeling, all relevant data bearing on the physical or other technical effect and the quantity required to produce such effect;

(b) the probable composition of or other relevant exposure from the article and of any substance formed in or on a food, drug, or cosmetic resulting from the use of such substance;

(c) the probable consumption of such substance in the diet of man and animals taking into account any chemically or pharmacologically related substance in such diet;

(d) safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of such substances for the use or uses for which they are proposed to be used, are generally recognized as appropriate for the use of animal experimentation data;

(e) the availability of any needed practicable methods of analysis for determining the identity and quantity of:

(i) such substance in or on an article;

(ii) any substance formed in or on such article because of the use of such substance; and

(iii) the pure substance and all intermediates and impurities; and

(f) facts supporting a contention that the proposed use of such substance will serve a useful purpose.

History: En. Sec. 13, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-713(b).

Cross-References

Misbranding drugs or devices, 50-31-306.

50-31-109. Use of additives. Any added poisonous or deleterious substance, any food additive, any pesticide chemical in or on a raw agricultural commodity, or any color additive shall, with respect to any particular use or intended use, be deemed unsafe for the purpose of application of 50-31-202(2) with respect to any food, 50-31-305(1) through (5) with respect to any drug or device, or 50-31-401(1) with respect to any cosmetic unless there is in effect a regulation pursuant to 50-31-108 limiting the quantity of such substance and the use or intended use of such substance conforms to the terms prescribed by such regulation. While such regulation relating to such substance is in effect, a food, drug, or cosmetic shall not by reason of bearing or containing such substance in accordance with the regulation be considered adulterated within the meaning of 50-31-202(1), 50-31-305(1) through (5), or 50-31-401(1).

History: En. Sec. 13, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-713(a).

50-31-110. Certain agricultural chemicals not color additives. Subsections (7) and (8) of 50-31-103 do not apply to a pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

History: En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; R.C.M. 1947, 27-702(u)(3); amd. Sec. 3, Ch. 361, L. 1981; amd. Sec. 5, Ch. 169, L. 1989.

50-31-111. When labeling requirement complied with. A requirement made by or under authority of this chapter that a word, statement, or other information shall appear on the label is not complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article or is easily legible through the outside container or wrapper.

History: En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; R.C.M. 1947, 27-702(i)(part); amd. Sec. 9, Ch. 37, L. 1979.

Cross-References

Agricultural seed labeling, Title 80, ch. 5, part 1.

Part 2
Food and Bottled Water

Part Cross-References

Municipal power to inspect foodstuffs and regulate soft drink establishments, 7-21-4201, 7-21-4202.

Control of food and other commodities during emergency, 10-3-505.

Immunity of persons donating food for free distribution, 27-1-716.

Supervision and regulation of milk industry, Title 81, ch. 23, parts 1 through 4.

50-31-201. Department authorized to adopt food standards. (1) Whenever in the judgment of the department such action will promote honesty and fair dealing in the interest of consumers, the department shall promulgate regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, standard of quality, and/or fill of container.

(2) In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the department shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label.

(3) The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated under authority of the federal act, or the department may promulgate by reference the definitions and standards promulgated under authority of the federal act.

History: En. Sec. 9, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-709.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-31-202. When food adulterated. A food is considered to be adulterated if:

(1) it bears or contains any poisonous or deleterious substance that may render it injurious to health. If the poisonous or deleterious substance is not an added substance, the food may not be considered adulterated under this subsection if the quantity of the substance in that food does not ordinarily render it injurious to health.

(2) it bears or contains any added poisonous or added deleterious substance, other than one that is:

(a) a pesticide chemical in or on a raw agricultural commodity;

(b) a food additive; or

(c) a color additive that is unsafe within the meaning of 50-31-109;

(3) it is a raw agricultural commodity and it bears or contains a pesticide chemical that is unsafe within the meaning of section 408(a) of the federal act (21 U.S.C. 346a(a)), as amended;

(4) it is or it bears or contains any food additive that is unsafe within the meaning of section 409 of the federal act (21 U.S.C. 348) as amended. However, if a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under section

408 of the federal act (21 U.S.C. 346) and the raw agricultural commodity has been subjected to processing, such as canning, cooking, freezing, dehydrating, or milling, the residue of the pesticide chemical remaining in or on the processed food may, notwithstanding the provisions of 50-31-108, 50-31-109, and subsection (4) of this section, not be determined unsafe if the residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of the residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity.

(5) it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance or if it is otherwise unfit for food;

(6) it has been produced, prepared, packed, or held under unsanitary conditions under which it may have become contaminated with filth or under which it may have been rendered diseased, unwholesome, or injurious to health;

(7) it is the product of a diseased animal or an animal that has died otherwise than by slaughter or that has been fed upon the uncooked offal from a slaughterhouse;

(8) its container is composed in whole or in part of any poisonous or deleterious substance that may render the contents injurious to health;

(9) any valuable constituent has been in whole or in part omitted or abstracted from the food;

(10) any substance has been substituted wholly or in part for the food;

(11) damage or inferiority has been concealed in any manner;

(12) any substance has been added to the food or mixed or packed with the food so as to increase its bulk or weight, reduce its quality or strength, or make it appear better or of greater value than it is;

(13) it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of 0.4%, harmless natural wax not in excess of 0.4%, or harmless natural gum and pectin. However, this paragraph does not apply to any confectionery by reason of its containing less than 0.5% by volume of alcohol derived solely from the use of flavoring extracts or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances.

(14) it is or bears or contains any color additive that is unsafe within the meaning of the federal act.

History: En. Sec. 10, Ch. 307, L. 1967; R.C.M. 1947, 27-710; amd. Sec. 211, Ch. 42, L. 1997.

Cross-References

Deceptive business practices, 45-6-318.

Montana Pesticides Act, Title 80, ch. 8.

50-31-203. *(Temporary)* **When food misbranded.** A food is considered to be misbranded if:

(1) its labeling is false or misleading in any particular;

(2) it is offered for sale under the name of another food;

(3) it is an imitation of another food for which a definition and standard of identity has been prescribed by regulations as provided by 50-31-201 or if it is an imitation of another food that is not subject to subsection (7) of this section, unless its label bears in type of uniform size and prominence the word imitation and, immediately after that word, the name of the food imitated;

(4) its container is made, formed, or filled in a manner that is misleading;

(5) it is in package form, unless it bears a label containing:

(a) the name and place of business of the manufacturer, packer, or distributor;

(b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variations must be permitted and exemptions as to small packages must be established by regulations prescribed by the department;

(6) any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed on the label or labeling with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in terms that render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) it purports to be or is represented as a food for which a definition and standard of identity have been prescribed by regulations as provided by 50-31-201, unless:

(a) it conforms to that definition and standard; and

(b) its label bears the name of the food specified in the definition and standard and, as may be required by the regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in the food;

(8) it purports to be or is represented as:

(a) a food for which a standard of quality has been prescribed by regulations as provided by 50-31-201 and its quality falls below that standard, unless its label bears, in a manner and form that the regulations specify, a statement that it falls below that standard; or

(b) a food for which a standard or standards of fill of container have been prescribed by regulation as provided by 50-31-201 and it falls below the standard of fill of container applicable, unless its label bears, in a manner and form that the regulations specify, a statement that it falls below that standard;

(9) it is not subject to the provisions of subsection (7) unless it bears labeling clearly giving:

(a) the common or usual name of the food, if there is one; and

(b) in case it is fabricated from two or more ingredients, the common or usual name of each ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each. To the extent that compliance with the requirements of this subsection (9)(b) is impractical or results in deception or unfair competition, exemptions must be established by regulations promulgated by the department. The requirements of this subsection (9)(b) do not apply to food products that are packaged at the direction of purchasers at retail at the time of sale, the ingredients of which are disclosed to the purchasers by other means in accordance with regulations promulgated by the department.

(10) it purports to be or is represented for special dietary uses, unless its label bears information concerning its vitamin, mineral, and other dietary properties that the department determines to be and by regulations prescribes as necessary in order to fully inform purchasers as to its value for special dietary uses;

(11) it bears or contains any artificial flavoring, artificial coloring, or chemical preservative unless it bears labeling stating that fact. To the extent that compliance with the requirements of this subsection is impracticable, exemptions must be established by regulations promulgated by the department. Butter, cheese, ice cream, and frozen desserts as described in 81-22-101 are exempt from label statements for artificial flavoring and artificial coloring.

(12) it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded;

(13) it is a color additive, unless its packaging and labeling are in conformity with packaging and labeling requirements applicable to that color additive prescribed under the provisions of the federal act;

(14) it is labeled "organic", "organically grown", "naturally grown", "ecologically grown", or "biologically grown" but does not conform to the definition in 50-31-222.

50-31-203. *(Effective on occurrence of contingency)* **When food misbranded.** A food is considered to be misbranded if:

(1) its labeling is false or misleading in any particular;

(2) it is offered for sale under the name of another food;

(3) it is an imitation of another food for which a definition and standard of identity has been prescribed by regulations as provided by 50-31-201 or if it is an imitation of another food that is not subject to subsection (7) of this section, unless its label bears in type of uniform size and prominence the word imitation and, immediately after that word, the name of the food imitated;

(4) its container is made, formed, or filled in a manner that is misleading;

(5) it is in package form, unless it bears a label containing:

(a) the name and place of business of the manufacturer, packer, or distributor;

(b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variations must be permitted and exemptions as to small packages must be established by regulations prescribed by the department;

(6) any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed on the label or labeling with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in terms that render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) it purports to be or is represented as a food for which a definition and standard of identity have been prescribed by regulations as provided by 50-31-201, unless:

(a) it conforms to that definition and standard; and

(b) its label bears the name of the food specified in the definition and standard and, as may be required by the regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in the food;

(8) it purports to be or is represented as:

(a) a food for which a standard of quality has been prescribed by regulations as provided by 50-31-201 and its quality falls below that standard, unless its label bears, in a manner and form that the regulations specify, a statement that it falls below that standard; or

(b) a food for which a standard or standards of fill of container have been prescribed by regulation as provided by 50-31-201 and it falls below the standard of fill of container applicable, unless its label bears, in a manner and form that the regulations specify, a statement that it falls below that standard;

(9) it is not subject to the provisions of subsection (7) unless it bears labeling clearly giving:

(a) the common or usual name of the food, if there is one; and

(b) in case it is fabricated from two or more ingredients, the common or usual name of each ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each. To the extent that compliance with the requirements of this subsection (9)(b) is impractical or results in deception or unfair competition, exemptions must be established by regulations promulgated by the department. The requirements of this subsection (9)(b) do not apply to food products that are packaged at the direction of purchasers at retail at the time of sale, the ingredients of which are disclosed to the purchasers by other means in accordance with regulations promulgated by the department.

(10) it purports to be or is represented for special dietary uses, unless its label bears information concerning its vitamin, mineral, and other dietary properties that the department determines to be and by regulations prescribes as necessary in order to fully inform purchasers as to its value for special dietary uses;

(11) it bears or contains any artificial flavoring, artificial coloring, or chemical preservative unless it bears labeling stating that fact. To the extent that compliance with the requirements of this subsection is impracticable, exemptions must be established by regulations promulgated by the department. Butter, cheese, ice cream, and frozen desserts as described in 81-22-101 are exempt from label statements for artificial flavoring and artificial coloring.

(12) it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded;

(13) it is a color additive, unless its packaging and labeling are in conformity with packaging and labeling requirements applicable to that color additive prescribed under the provisions of the federal act.

History: En. Sec. 11, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-711; amd. Sec. 2, Ch. 605, L. 1985; amd. Sec. 212, Ch. 42, L. 1997; amd. Sec. 4, Ch. 172, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 172 deleted former (14) that read: "(14) it is labeled "organic", "organically grown", "naturally grown", "ecologically grown", or "biologically grown" but does not conform to the definition in 50-31-222". Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 7(2), Ch. 172, L. 1999, provided that this section is effective upon the implementation of a state organic certification program pursuant to 80-11-601(3).

Cross-References

Actual and constructive fraud, 28-2-404 through 28-2-406.

Deceptive business practices, 45-6-318.

50-31-204. Labeling requirements for products in semblance of honey or containing honey. (1) Any product sold in semblance of honey which is a blend or mixture of honey and other ingredients must be labeled in such a way that the name of the main ingredient added to the honey will be printed so that it will be as prominent and conspicuous as the word "honey". The word "imitation" may not be used in the name of a product which is in semblance of honey whether or not it contains any honey.

(2) The label for a product which is not in semblance of honey and which contains honey may include the word "honey" in the name of the product. The relative position of the word "honey" in the product name and in the list of ingredients, when required, shall be determined by its prominence as an ingredient in the product.

History: En. Sec. 3, Ch. 307, L. 1967; amd. Sec. 2, Ch. 171, L. 1971; amd. Sec. 2, Ch. 114, L. 1974; amd. Sec. 9, Ch. 403, L. 1977; R.C.M. 1947, 27-703(part).

Cross-References

Deceptive business practices, 45-6-318.

Labeling violations penalties, 50-31-506.

Injunctive remedies, 50-31-508.

50-31-205. Permits for manufacture, processing, and packing of foods. (1) Whenever the department finds after investigation that the distribution in Montana of any class of food may, by reason of contamination with microorganisms during manufacture, processing, or packing thereof in any locality, be injurious to health and that such injurious nature cannot be adequately determined after such articles have entered commerce, it then, and in such case only, shall promulgate regulations providing for the issuance to manufacturers, processors, or packers of such class of food in such locality of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food for such temporary period of time as may be necessary to protect the public health.

(2) After the effective date of such regulations and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the department as provided by such regulations.

History: En. Sec. 12, Ch. 307, L. 1967; R.C.M. 1947, 27-712(a).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-31-206. Permitholder to allow inspections. Any officer or employee duly designated by the department shall have access to any factory or establishment, the operator of which holds a permit from the department, for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator.

History: En. Sec. 12, Ch. 307, L. 1967; R.C.M. 1947, 27-712(c).

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-31-207. Suspension of permit. The department is authorized to suspend immediately upon notice any permit issued under authority of 50-31-205 if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the department shall, immediately after prompt hearing and inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit as originally issued or as amended.

History: En. Sec. 12, Ch. 307, L. 1967; R.C.M. 1947, 27-712(b).

50-31-208. Sale of hamburger and beef patty mix. (1) No food service establishment or retail establishment may use the terms "hamburger", "burger", or other similar term in any advertisement or menu to refer to any beef patty mix. A food service establishment or retail establishment selling or serving beef patty mix may refer to the product as "beef patty mix" or by any other term which accurately informs the customer of the nature of the food product which he is sold or served.

(2) If beef patty mix is sold or served in a food service establishment or retail establishment, a list of ingredients must appear on the menu or label, or, if there is no menu or label, on a placard as follows:

(a) The term "beef patty mix" or any other term which accurately informs the customer of the nature of the food product and its ingredients must be included.

(b) The ingredients must be listed in descending order of predominance by weight.

(c) If there is no menu or label, the lettering on the placard must be at least 1 inch in height (72-point letters) in boldface and in colors that contrast with the placard.

(d) The placard must be posted in a permanent place, conspicuous to the customer, in each room or area where food is served or sold at retail.

(3) If hamburger or ground beef is sold in a retail establishment, the grade, as defined in 50-31-103(24), and the maximum fat and minimum lean content must appear on each displayed package or, if the product is not packaged for display, on a placard. If a placard is used, it must satisfy the requirements of subsections (2)(c) and (2)(d) of this section. The provisions of this subsection do not apply to the service of prepared hamburger or ground beef at a food service establishment.

History: En. Sec. 5, Ch. 456, L. 1979; amd. Sec. 2, Ch. 361, L. 1981; amd. Sec. 6, Ch. 169, L. 1989; amd. Sec. 2, Ch. 133, L. 1991.

Cross-References

Penalties for violation, 50-31-506.

Injunctive remedies, 50-31-508.

50-31-209 through 50-31-220 reserved.

50-31-221. *(Temporary)* **Short title.** Sections 50-31-221 through 50-31-223 and 50-31-231 may be cited as the "Montana Truth in Labeling Act for Organic Foods". *(Repealed on occurrence of contingency—secs. 5, 7(2), Ch. 172, L. 1999.)*

History: En. Sec. 3, Ch. 605, L. 1985.

Compiler's Comments

Repealer — Contingent Effective Date: Section 7(2), Ch. 172, L. 1999, provided: "[Sections 3 through 5] [section 5 repeals this section] are effective upon the implementation of a state organic certification program pursuant to [section 1(3)] [80-11-601(3)]."

50-31-222. *(Temporary)* **Organic food defined.** Organic food is food that:

(1) was produced, harvested, cleaned, stored, distributed, processed, and packaged without application of synthetically compounded fertilizers, pesticides, herbicides, fungicides, growth regulators, aromatic petroleum solvents, diesel and other petroleum fractions, or other synthetically compounded substances, and without being preserved by irradiation;

(2) was produced, harvested, cleaned, stored, distributed, processed, and packaged with application of only microorganisms, microbiological products, and materials consisting of or derived or extracted solely from plant, animal, or mineral-bearing rock substances, including but not limited to Bordeaux mixtures and trace elements, soluble kelp, lime, sulfur, gypsum, dormant oils, summer oils, fish emulsion, soap, green manure, compost, and animal manures, and ascorbic acid, sodium ascorbate, calcium ascorbate, and citric acid used in processing;

(3) contains no added coloring or synthetically compounded material;

(4) does not contain pesticide residue in excess of 10% of the level regarded as safe by the U.S. food and drug administration;

(5) in the case of perennial crops, was grown in fields to which no synthetically compounded substances were applied for 24 months before the appearance of flower buds and throughout the entire growing and harvesting season of the crop;

(6) in the case of annual crops and 2-year crops, was grown in fields to which no synthetically compounded substances or growth regulators were applied for 24 months before planting or transplanting and throughout the entire growing and harvesting season of the crop;

(7) in the case of meat, poultry, or fish, was raised for at least the final 60% of its life:

(a) on food produced in conformity with subsection (5) or (6);

(b) without the use of any chemical or drug to stimulate or regulate growth or tenderness; and

(c) without any drug or antibiotic administered or introduced by injection or ingestion, except for treatment of a specific disease or malady not less than 90 days before the slaughter of such animal, bird, or fish; and

(8) in the case of milk or eggs, was produced by animals raised in accordance with subsection (7) except that no chemical, drug, or antibiotic was administered or introduced less than 30 days before the production of such milk or eggs. *(Repealed on occurrence of contingency—secs. 5, 7(2), Ch. 172, L. 1999.)*

History: En. Sec. 4, Ch. 605, L. 1985.

Compiler's Comments

Repealer — Contingent Effective Date: Section 7(2), Ch. 172, L. 1999, provided: "[Sections 3 through 5] [section 5 repeals this section] are effective upon the implementation of a state organic certification program pursuant to [section 1(3)] [80-11-601(3)]."

Cross-References

Processing and synthetically compounded defined, 50-31-103.

50-31-223. *(Temporary)* **Requirements for labeling.** (1) No claim or implication may be made in the labeling, advertising, or promotion of raw or processed food products, meat, fish, poultry, milk, eggs, or seeds that the food is organic, organically grown, naturally grown, ecologically grown, or biologically grown unless it conforms to the definition set forth in 50-31-222.

(2) Packaged organic food must be labeled as follows, or with substantially similar language: "ORGANIC FOOD AS DEFINED IN MONTANA LAW (50-31-222, MCA)". *(Repealed on occurrence of contingency—secs. 5, 7(2), Ch. 172, L. 1999.)*

History: En. Sec. 5, Ch. 605, L. 1985.

Compiler's Comments

Repealer — Contingent Effective Date: Section 7(2), Ch. 172, L. 1999, provided: "[Sections 3 through 5] [section 5 repeals this section] are effective upon the implementation of a state organic certification program pursuant to [section 1(3)] [80-11-601(3)]."

50-31-224 through 50-31-230 reserved.

50-31-231. *(Temporary)* **Injunctive relief.** (1) In addition to the remedies provided in 50-31-509, any person may bring an action in district court pursuant to this section, and the district court has jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction restraining any person from violating any provision of 50-31-223. The court may award attorney fees to the prevailing party in the action.

(2) The prohibition provided in 50-31-223 does not apply to any wholesale or retail distributor who in good faith makes the same representations on a package or label or in advertising or promotion as have been made by the manufacturer, distributor, or other person providing the food to that wholesale or retail distributor. *(Repealed on occurrence of contingency—secs. 5, 7(2), Ch. 172, L. 1999.)*

History: En. Sec. 6, Ch. 605, L. 1985.

Compiler's Comments

Repealer — Contingent Effective Date: Section 7(2), Ch. 172, L. 1999, provided: "[Sections 3 through 5] [section 5 repeals this section] are effective upon the implementation of a state organic certification program pursuant to [section 1(3)] [80-11-601(3)]."

Cross-References

Injunctions, Title 27, ch. 19.

50-31-232 through 50-31-235 reserved.

50-31-236. Labeling requirements for bottled water. (1) A person may not sell, deliver, offer for sale, hold for sale, or give away bottled water unless it conforms to and is labeled in compliance with the following standards:

(a) bottled mineral water must be labeled "mineral water" or "natural mineral water";

(b) bottled water that contains naturally occurring carbon dioxide that emerges from the water and is bottled directly with its entrapped gas or that has been mechanically separated from and subsequently reintroduced into the water at a level not higher than that naturally occurring in the water must be labeled "naturally carbonated water" or "naturally sparkling water". Bottled water that contains carbon dioxide from a source that is not naturally occurring may not be labeled with the word "naturally".

(c) bottled artesian water may be labeled "artesian well water", "natural artesian water", or "natural well water";

(d) bottled spring water may be labeled "spring water" or "natural spring water";

(e) bottled well water may be labeled "well water" or "natural well water";

(f) bottled purified water must be labeled "purified water" and state the method of preparation. All of the letters specifying the type of bottled water must be printed in the same type size, style, and color. However, bottled purified water produced by distillation may be labeled "distilled water".

(g) bottled demineralized water that is not purified water must be labeled "demineralized water" and state the method of preparation. All of the letters specifying the type of bottled water must be printed in the same type size, style, and color. However, bottled demineralized water produced by distillation may be labeled "distilled water".

(h) bottled drinking water must be labeled "drinking water";

(i) bottled fluoridated water must specify on the label whether the fluoride is naturally occurring or added;

(j) unless the water is in fact spring water, language containing the word "spring" or "springs" may not be used as a brand name on the label or in words describing the bottled water.

(2) A product meeting more than one definition may be labeled with any of the definitions with which it complies.

History: En. Sec. 2, Ch. 169, L. 1989.

50-31-237. Health claims for bottled water. Claims of medicinal or health-giving properties on labels or in advertisements for bottled water are prohibited.

History: En. Sec. 3, Ch. 169, L. 1989.

50-31-238. Misrepresentation of a company name. A bottler, distributor, or vendor of bottled water whose company name or trademark contains the words "spring", "springs", "well", "artesian well", "mineral", or any derivative of those words shall label each bottle with the company's brand name or trademark and, if the source of the bottled water is different from the source stated in the company name, the source of the water. This information must be in typeface at least equal to the size of the typeface of the company name or trademark.

History: En. Sec. 4, Ch. 169, L. 1989.

Part 3

Drugs and Devices

Part Cross-References

Pharmacy regulation, Title 37, ch. 7.

Dangerous drugs, Title 45, ch. 9.

Model Drug Paraphernalia Act, Title 45, ch. 10, part 1.

Controlled substances, Title 50, ch. 32.

50-31-301. Definitions. As used in this part, the following definitions apply:

(1) "Antibiotic drug" means any drug intended for use by humans containing any quantity of any chemical substance that is produced by a microorganism and that has the capacity to inhibit or destroy microorganisms in dilute solution (including the chemically synthesized equivalent of such a substance).

(2) "Code imprint" means a series of letters or numbers assigned by the manufacturer or distributor to a specific drug, marks or monograms unique to the manufacturer or distributor of the drug, or both.

(3) "Distributor" means a person who distributes for resale a drug in solid dosage form under the person's own label whether or not the person is the manufacturer of the drug.

(4) "Established name", with respect to a drug or ingredient of the drug, means:

(a) the applicable official name designated pursuant to section 508 of the federal act (21 U.S.C. 358);

(b) if there is no official name and the drug or the ingredient is an article recognized in an official compendium, then the official title of the drug or ingredient in the compendium. If this subsection (4)(b) applies to an article recognized in the United States Pharmacopoeia, the official title used in the United States Pharmacopoeia applies.

(c) if neither subsection (4)(a) nor (4)(b) applies, then the common or usual name, if any, of the drug or of the ingredient.

(5) "Legend drug" means any drug defined by section 503(b) of the federal act (21 U.S.C. 353(b)), as amended on January 15, 1980, under which its label is required to bear the statement: "Caution: Federal law prohibits dispensing without prescription."

(6) "Manufacturer" means a person who mixed the final ingredients and prepared the final drug product.

(7) "Solid dosage form" means capsules or tablets intended for oral use.

History: En. Sec. 15, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-715(part); amd. Sec. 1, Ch. 403, L. 1979; amd. Sec. 1, Ch. 95, L. 1981; amd. Sec. 1, Ch. 239, L. 1983; amd. Sec. 213, Ch. 42, L. 1997.

50-31-302. Antiseptics considered to be germicides. The representation of a drug in its labeling or advertisement as an antiseptic is considered to be a representation that it is a germicide except in the case of a drug purporting to be or represented as an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use which involves prolonged contact with the body.

History: En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; R.C.M. 1947, 27-702(n).

50-31-303. Certain drug advertisements considered false. (1) For the purpose of this chapter, the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, or a sexually transmitted disease shall also be deemed to be false, except that no advertisement not in violation of 50-31-107(1) shall be deemed to be false under this section if it is disseminated only to members of the medical, dental, or veterinary professions or appears only in the scientific periodicals of these professions or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices.

(2) Whenever the department determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the department shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the department may deem necessary in the interests of public health.

(3) This section shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious.

History: En. Sec. 20, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-720(b); amd. Sec. 10, Ch. 37, L. 1979; amd. Sec. 17, Ch. 440, L. 1989.

Cross-References

Advertising drug paraphernalia prohibited, 45-10-106.

50-31-304. Certain drugs and devices exempt from labeling requirements of chapter. Drugs and devices which are, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed shall be exempt from any labeling or packaging requirements of this chapter, provided that such drugs and devices are being delivered, manufactured, processed, labeled, repacked, or otherwise held in compliance with regulations issued by the department or under the federal act.

History: En. Sec. 15, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-715(part).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-31-305. When drug or device adulterated. A drug or device shall be deemed to be adulterated if it:

(1) consists in whole or in part of any filthy, putrid, or decomposed substance;

(2) has been produced, prepared, packed, or held under unsanitary conditions whereby it may have been contaminated with filth or rendered injurious to health;

(3) is a drug and the methods used in or the facilities or controls used for its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess;

(4) is a drug and its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health;

(5) is a drug and it bears or contains, for purposes of coloring only, a color additive which is unsafe within the meaning of the federal act or it is a color additive, the intended use of which in or on drugs is for purposes of coloring only, and is unsafe within the meaning of the federal act;

(6) purports to be or is represented as a drug, the name of which is recognized in an official compendium, and its strength differs from or its quality or purity falls below the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium or, in the absence of or inadequacy of such tests or methods of assay, those prescribed under authority of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this subsection because it differs from the standard of strength, quality, or purity therefor set forth in such compendium if its difference in strength, quality, or purity from such standard is plainly stated on its label.

(7) is not subject to the provisions of subsection (6) of this section and its strength differs from or its purity or quality falls below that which it purports or is represented to possess; or

(8) is a drug and any substance has been:

(a) mixed or packed therewith so as to reduce its quality or strength; or

(b) substituted wholly or in part therefor.

History: En. Sec. 14, Ch. 307, L. 1967; R.C.M. 1947, 27-714; amd. Sec. 11, Ch. 37, L. 1979.

Cross-References

Use of additives, 50-31-109.

50-31-306. When drug or device misbranded. (1) A drug or device is considered to be misbranded:

(a) if its labeling is false or misleading in any particular;

(b) if in package form unless it bears a label containing:

(i) the name and place of business of the manufacturer, packer, or distributor, except that a prescription drug must contain the name and place of business of the manufacturer as well as the packer or distributor; and

(ii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variation may be permitted and exemptions as to small packages may be allowed in accordance with regulations prescribed by the department or issued under the federal act;

(c) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed on the label or labeling with conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in terms that render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) if it is for use by humans and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, sulfonmethane, or any chemical derivative of the substance that, after investigation, has been found to be and designated as habit-forming by regulations issued by the department under this chapter or by regulations issued pursuant to section 502(d) of the federal act (21 U.S.C. 352(d)), unless its label bears the name and quantity or proportion of the substance or derivative in juxtaposition to the statement "Warning—May be habit-forming";

(e) if it is a drug, unless its label bears to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula):

(i) the established name (as defined in 50-31-301) of the drug, if there is one; and

(ii) in case the drug is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances contained in the drug. However, the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subsection (1)(e)(ii), applies only to prescription drugs, and to the extent that compliance with the requirements of this subsection (1)(e)(ii) is impracticable, exemptions may be allowed under regulations promulgated by the department or under the federal act.

(f) unless its labeling bears:

(i) adequate directions for use; however, if any requirement of this subsection (1)(f)(i), as applied to any drug or device, is not necessary for the protection of the public health, the department shall promulgate regulations exempting the drug or device from the requirements, and articles exempted under regulations issued under section 502(f) of the federal act (21 U.S.C. 352(f)) may also be exempt; and

(ii) adequate warnings against use in those pathological conditions or by children when its use may be dangerous to health or adequate warnings against unsafe dosage or methods or duration of administration or application, in a manner and form that are necessary for the protection of users;

(g) if it purports to be a drug, the name of which is recognized in an official compendium unless it is packaged and labeled as prescribed in the compendium. The method of packing may be modified with the consent of the department or if consent is obtained under the federal act. In the event of inconsistency between the requirements of this subsection (1)(g) and those of subsection (1)(e) as to the name by which the drug or its ingredients must be designated, the requirements of subsection (1)(e) prevail.

(h) if it has been found by the department or under the federal act to be a drug liable to deterioration, unless it is packaged in a form and manner and its label bears a statement of precautions that the regulations issued by the department or under the federal act require as necessary for the protection of public health. A regulation may not be established for any drug recognized in an official compendium until the department has informed the appropriate body charged with the revision of the compendium of the need for the packaging or labeling requirements and the body has failed within a reasonable time to prescribe the requirements.

(i) if it is a drug and its container is made, formed, or filled in a way that is misleading;

(j) if it is an imitation of another drug;

(k) if it is offered for sale under the name of another drug;

(l) if it is dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended, or suggested in the labeling;

(m) if it is, purports to be, or is represented as a drug composed wholly or partly of insulin, unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 506 of the federal act (21 U.S.C. 356); and

(ii) the certificate or release is in effect with respect to the drug;

(n) if it is, purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, any other antibiotic drug, or any derivative thereof unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 507 of the federal act (21 U.S.C. 357); and

(ii) the certificate or release is in effect with respect to the drug. This subsection (1)(n) does not apply to any drug or class of drugs exempted by regulations promulgated under section 507(c) or (d) of the federal act (21 U.S.C. 357(c) or (d)).

(o) if it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with the packaging and labeling requirements applicable to the color additive prescribed under the provisions of 50-31-108 or of the federal act;

(p) in the case of any prescription drug distributed or offered for sale in this state, unless the manufacturer, packer, or distributor of the drug includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of:

(i) the established name, as defined in 50-31-301;

(ii) the formula showing quantitatively each ingredient of the drug to the extent required for labels under section 502(e) of the federal act (21 U.S.C. 352(e)); and

(iii) other information in brief summary relating to side effects, contraindications, and effectiveness that is required in regulations issued under the federal act; or

(q) if a trademark, trade name, or other identifying mark, imprint, or device or another or any likeness of the foregoing has been placed on the drug or upon its container with intent to defraud.

(2) A drug that is subject to 50-31-307 is considered to be misbranded if, at any time prior to dispensing, its label fails to bear the statement "Caution: Federal Law Prohibits Dispensing Without Prescription", or "Caution: State Law Prohibits Dispensing Without Prescription". A drug to which 50-31-307 does not apply is considered to be misbranded if, at any time prior to dispensing, its label bears the caution statement quoted in the preceding sentence.

History: En. Secs. 15, 16, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-715(part), 27-716(d); amd. Sec. 12, Ch. 37, L. 1979; amd. Sec. 2, Ch. 403, L. 1979; amd. Sec. 214, Ch. 42, L. 1997.

Cross-References

Regulation of sale of drugs and medicines by Board of Pharmacy, 37-7-201.

50-31-307. Dispensing of prescription drugs. (1) A drug intended for use by humans that is included in one of the categories in subsection (2) may be dispensed only:

(a) upon a written prescription of a practitioner licensed by law to administer the drug;

(b) upon an oral prescription of the practitioner that is reduced promptly to writing and filed by the pharmacist; or

(c) by refilling a written or oral prescription if the refilling is authorized by the practitioner, either in the original prescription or by an oral order that is reduced promptly to writing and filed by the pharmacist.

(2) A drug must be dispensed as provided in subsection (1) if the drug:

(a) is a habit-forming drug to which 50-31-306(1)(d) applies;

(b) because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer the drug; or

(c) is limited by an approved application under section 505 of the federal act (21 U.S.C. 355) or 50-31-311 to use under the professional supervision of a practitioner licensed by law to administer the drug.

(3) If the drug is a factory prepackaged oral contraceptive, it may be dispensed as provided in subsection (1) or by a registered nurse employed by a family planning clinic under contract with the department of public health and human services pursuant to a physician's written protocol specifying the circumstances under which dispensing is appropriate and pursuant to the board of pharmacy's rules concerning labeling, storage, and recordkeeping of drugs.

(4) The act of dispensing a drug contrary to the provisions of this section is considered an act that results in a drug being misbranded while held for sale.

History: En. Sec. 16, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-716(a); amd. Sec. 3, Ch. 472, L. 1989; amd. Sec. 130, Ch. 418, L. 1995; amd. Sec. 308, Ch. 546, L. 1995; amd. Sec. 215, Ch. 42, L. 1997.

Cross-References

Regulation of sale of drugs and medicines by Board of Pharmacy, 37-7-201.

Distribution or sale of DMSO for human use, 50-42-102.

50-31-308. Prescription drugs exempt from certain provisions of chapter. Any drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug shall be exempt from the requirements of 50-31-306, except subsections (1)(a), (1)(j), (1)(k), (1)(m), (1)(n), and the packaging requirements of subsections (1)(g) and (1)(h), if the drug bears a label containing the name and address of the dispenser, the serial number and date of the prescription or of its filling, the name of the prescriber, and if stated in the prescription, the name of the patient and the directions for use and cautionary statements, if any, contained in such prescription. This exemption shall not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail or to a drug dispensed in violation of 50-31-307.

History: En. Sec. 16, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-716(b).

50-31-309. Removal of drugs from prescription requirement. The department may by regulation remove drugs subject to 50-31-306(1)(d) and 50-31-311 from the requirements of 50-31-307 when such requirements are not necessary for the protection of the public health. Drugs removed from the prescription requirements of the federal act by regulations issued thereunder may also, by regulations issued by the department, be removed from the requirements of 50-31-307.

History: En. Sec. 16, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-716(c).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-31-310. Narcotic and marijuana laws not affected. Nothing in 50-31-306(2), 50-31-307, 50-31-308, or 50-31-309 shall be construed to relieve any person from any requirement prescribed by or under authority of law with respect to drugs now included or which may hereafter be included within the classifications of narcotic drugs or marijuana, as defined in the applicable federal and state laws relating to narcotic drugs and marijuana.

History: En. Sec. 16, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-716(e).

Cross-References

Offenses involving dangerous drugs, Title 45, ch. 9.

50-31-311. New drug application required. (1) Except as provided in Title 50, chapter 42, a person may not sell, deliver, offer for sale, hold for sale, or give away any new drug unless:

(a) an application with respect to the drug has been approved and the approval has not been withdrawn under section 505 of the federal act (21 U.S.C. 355); or

(b) when not subject to the federal act, the drug has been tested and has been found to be safe for use and effective in use under the conditions prescribed, recommended, or suggested in the labeling of the drug and, prior to selling or offering for sale the drug, there has been filed with the department an application setting forth:

(i) full reports of investigations that have been made to show whether or not the drug is safe for use and whether the drug is effective in use;

(ii) a full list of the articles used as components of the drug;

(iii) a full statement of the composition of the drug;

(iv) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of the drug;

(v) samples of the drug and of the articles used as components of the drug that the department may require; and

(vi) specimens of the labeling proposed to be used for the drug.

(2) An application provided for in subsection (1)(b) becomes effective on the 180th day after the filing of the application. However, if the department finds, after due notice to the applicant and giving the applicant an opportunity for a hearing, that the drug is not safe or not effective for use under the conditions prescribed, recommended, or suggested in the proposed labeling of

the drug, the department shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

(3) An order refusing to permit an application under this section to become effective may be revoked by the department.

History: En. Sec. 17, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-717(a) thru (c); amd. Sec. 1, Ch. 333, L. 1981; amd. Sec. 216, Ch. 42, L. 1997.

50-31-312. Exemptions from new drug application requirement. (1) Section 50-31-311 does not apply to:

(a) a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs, provided the drug is plainly labeled in compliance with regulations issued by the department or pursuant to section 505(i) or 507(d) of the federal act (21 U.S.C. 355(i) or 357(d));

(b) a drug sold in this state at any time prior to the enactment of this chapter or introduced into interstate commerce at any time prior to the enactment of the federal act;

(c) any drug that is manufactured by an establishment licensed under 42 U.S.C. 262; or

(d) any drug that is subject to 50-31-306(1)(n).

(2) The provisions of 50-31-103(30) do not apply to any drug, when the drug is intended solely for use under conditions prescribed, recommended, or suggested in labeling with respect to the drug, that on October 9, 1962, or on the date immediately preceding July 1, 1967:

(a) was commercially sold or used in this state or in the United States;

(b) was not a new drug as defined by 50-31-103(30) as then in force; and

(c) was not covered by an effective application under 50-31-311 or under section 505 of the federal act (21 U.S.C. 355).

History: En. Sec. 17, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-717(d), (e); amd. Sec. 2, Ch. 456, L. 1979; amd. Sec. 7, Ch. 169, L. 1989; amd. Sec. 217, Ch. 42, L. 1997.

50-31-313. Code imprint required on legend drugs. No legend drug in solid dosage form may be manufactured or distributed in this state unless it is clearly marked or imprinted with a code imprint identifying the drug and the manufacturer or distributor of the drug.

History: En. Sec. 2, Ch. 95, L. 1981.

Cross-References

Penalty for violation, 50-31-506.

50-31-314. Exemptions from code imprint requirement. The board of pharmacy may grant exemptions from the requirements of 50-31-313 and 50-31-315 upon a showing by a drug manufacturer or distributor that size, physical characteristics, or other compelling reasons render application of a code imprint on a legend drug subject to the provisions of 50-31-313 impractical or impossible. Any exemption granted must be included in the list required by 50-31-315 and must describe the physical characteristics and type of drug covered by the exemption.

History: En. Sec. 3, Ch. 95, L. 1981; amd. Sec. 1, Ch. 247, L. 1983.

Cross-References

Board of Pharmacy, Title 37, ch. 7, part 2.

50-31-315. List of code imprints to be provided. Upon request of the board of pharmacy, all manufacturers and distributors of legend drugs in solid dosage form who produce or distribute legend drugs in Montana must provide and keep current a list of those drugs, which list identifies the manufacturer and the specific type of each drug by code imprint.

History: En. Sec. 4, Ch. 95, L. 1981; amd. Sec. 1, Ch. 247, L. 1983.

Cross-References

Board of Pharmacy, Title 37, ch. 7, part 2.

Penalty for violation, 50-31-506.

Part 4
Cosmetics

Part Cross-References

Licensing of cosmetologists, Title 37, ch. 31.

50-31-401. When cosmetic adulterated. A cosmetic shall be deemed to be adulterated if:

(1) it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual;

(2) it consists in whole or in part of any filthy, putrid, or decomposed substance;

(3) it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or rendered injurious to health;

(4) its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(5) it is not a hair dye and it is or it bears or contains a color additive which is unsafe within the meaning of the federal act.

History: En. Sec. 18, Ch. 307, L. 1967; R.C.M. 1947, 27-718(part).

Cross-References

Use of additives, 50-31-109.

50-31-402. When cosmetic misbranded. A cosmetic shall be deemed to be misbranded if:

(1) its labeling is false or misleading in any particular;

(2) in package form unless it bears a label containing:

(a) the name and place of business of the manufacturer, packer, or distributor; and

(b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variations shall be permitted and exemptions as to small packages shall be established by regulations prescribed by the department;

(3) any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(4) its container is so made, formed, or filled as to be misleading;

(5) it is a color additive, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of the federal act.

History: En. Sec. 19, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-719(part).

50-31-403. Exceptions for hair dyes. (1) Section 50-31-401 shall not apply to coal tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution—This product contains ingredients which may cause skin irritation on certain individuals, and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness", and the labeling of which bears adequate directions for such preliminary testing.

(2) Section 50-31-402(5) shall not apply to packages of color additives which, with respect to their use for cosmetics, are marketed and intended for use only in or on hair dyes (as defined in 50-31-404).

History: (1)En. Sec. 18, Ch. 307, L. 1967; Sec. 27-718, R.C.M. 1947; (2)En. Sec. 19, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 27-719, R.C.M. 1947; R.C.M. 1947, 27-718(part), 27-719(part).

50-31-404. Term hair dye not to include eyelash or eyebrow dyes. For the purpose of 50-31-401(5) and 50-31-403, the term "hair dye" shall not include eyelash dyes or eyebrow dyes.

History: En. Sec. 18, Ch. 307, L. 1967; R.C.M. 1947, 27-718(part).

Part 5

Prohibited Acts, Penalties, and Remedies

50-31-501. Prohibited acts. The following acts and the causing of the acts within the state of Montana are prohibited:

(1) the manufacture, sale or delivery, holding, or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded;

(2) the adulteration or misbranding of any food, drug, device, or cosmetic;

(3) the receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded and the delivery or proffered delivery thereof for pay or otherwise;

(4) the sale, delivery for sale, holding for sale, or offering for sale of any article in violation of 50-31-205 or 50-31-311;

(5) the dissemination of any false advertisement;

(6) the refusal to permit entry or inspection or to permit the taking of a sample, as authorized by 50-31-106;

(7) the giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by and containing the name and address of the person residing in the state of Montana from whom the person received in good faith the food, drug, device, or cosmetic;

(8) the removal or disposal of a detained or embargoed article in violation of 50-31-509;

(9) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of or the doing of any other act with respect to a food, drug, device, or cosmetic if the act is done while the article is held for sale and results in the article being adulterated or misbranded;

(10) forging, counterfeiting, simulating, or falsely representing or, without proper authority, using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of this chapter or of the federal act;

(11) the using on the labeling of any drug or in any advertisement relating to the drug of any representation or suggestion that an application with respect to the drug is effective under 50-31-311 or that the drug complies with the provisions of 50-31-311;

(12) in the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor to maintain for transmittal or to transmit to any practitioner licensed by applicable law to administer the drug who makes written request for information as to the drug true and correct copies of all printed matter that is required to be included in any package in which that drug is distributed or sold or other printed matter as is approved under the federal act. This subsection does not exempt any person from any labeling requirement imposed by or under other provisions of this chapter.

(13) placing or causing to be placed upon any drug or device or container of a drug, with intent to defraud, the trade name, other identifying mark, or imprint of another or any likeness of the name, mark, or imprint;

(14) selling, dispensing, disposing of, or causing to be sold, dispensed, or disposed of or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, any drug, device, or any container of the drug or device with knowledge that the trade name, other identifying mark, or imprint of another or any likeness of any of the foregoing has been placed on the drug, device, or container in a manner prohibited by subsection (13);

(15) making, selling, disposing of, or causing to be made, sold, or disposed of or keeping in possession, control, or custody or concealing, with intent to defraud, any punch, die, plate, or other thing designed to print, imprint, or reproduce that trade name, other identifying mark, or imprint of another or any likeness of the name, mark, or imprint upon any drug, device, or container of the drug or device;

(16) the using by any person to the person's own advantage or revealing, other than to officers or employees of the department or the courts when relevant in any judicial proceeding under this chapter, any information acquired under authority of this chapter concerning any method or process that as a trade secret is entitled to protection;

(17) the distribution in commerce of a consumer commodity, as defined in this chapter, if the commodity is contained in a package or if there is affixed to that commodity a label which does not conform to the provisions of this chapter and of regulations promulgated under authority of this chapter. This prohibition does not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that the persons:

(a) are engaged in the packaging or labeling of the commodities; or

(b) prescribe or specify by any means the manner in which the commodities are packaged or labeled.

(18) the labeling or packaging of a food, drug, or cosmetic which fails to conform with the requirements of this chapter.

History: En. Sec. 3, Ch. 307, L. 1967; amd. Sec. 2, Ch. 171, L. 1971; amd. Sec. 2, Ch. 114, L. 1974; amd. Sec. 9, Ch. 403, L. 1977; R.C.M. 1947, 27-703(1) thru (16); amd. Sec. 309, Ch. 546, L. 1995.

Cross-References

Immunity of persons donating food for free distribution, 27-1-716.

Deceptive business practices, 45-6-318.

Alteration of dangerous drug labels unlawful — penalty, 45-9-105, 45-9-106.

Penalties, 50-31-506.

50-31-502. Unlawful labeling of products resembling honey. It is unlawful for any person to sell or offer for sale any product which is in semblance of honey and which is labeled, advertised, or otherwise represented to be honey if it is not honey.

History: En. Sec. 3, Ch. 307, L. 1967; amd. Sec. 2, Ch. 171, L. 1971; amd. Sec. 2, Ch. 114, L. 1974; amd. Sec. 9, Ch. 403, L. 1977; R.C.M. 1947, 27-703(part).

Cross-References

Labeling requirements, 50-31-204.

Penalties, 50-31-506.

50-31-503. Prosecution of minor violations not required. Nothing in this chapter shall be construed as requiring the department to report for the institution of proceedings under this chapter minor violations of this chapter whenever the department believes that the public interest will be adequately served in the circumstances by a suitable written notice of warning.

History: En. Sec. 8, Ch. 307, L. 1967; R.C.M. 1947, 27-708.

50-31-504. Notice and hearing required prior to prosecution. Before a violation of this chapter is reported to a state or county attorney for the institution of a criminal proceeding, the person against whom the proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the department or its designated agent, either orally or in writing and either in person or by attorney, with regard to the contemplated proceeding.

History: En. Sec. 7, Ch. 307, L. 1967; amd. Sec. 2, Ch. 187, L. 1977; R.C.M. 1947, 27-707(part).

Cross-References

Contested case defined — applicability of Montana Administrative Procedure Act, 2-4-102.

50-31-505. Duty of state or county attorneys to prosecute. Each state attorney or county attorney to whom the department reports a violation of this chapter shall cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

History: En. Sec. 7, Ch. 307, L. 1967; amd. Sec. 2, Ch. 187, L. 1977; R.C.M. 1947, 27-707(part).

Cross-References

Duties of Attorney General, 2-15-501.

Duties of County Attorney relating to state matters, 7-4-2716.

50-31-506. Penalties. (1) Any person who violates any of the provisions of 50-31-204, 50-31-208, 50-31-313, 50-31-315, 50-31-501, or 50-31-502 is guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than 3 months, a fine of not more than $250, or both such imprisonment and fine.

(2) If the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment for not more than 6 months, a fine of not more than $500, or both such imprisonment and fine.

History: En. Sec. 5, Ch. 307, L. 1967; R.C.M. 1947, 27-705(a); amd. Sec. 3, Ch. 456, L. 1979; amd. Sec. 5, Ch. 95, L. 1981.

Cross-References

Immunity of persons donating food for free distribution, 27-1-716.

Unauthorized sale or distribution of DMSO for human use, 50-42-102.

50-31-507. Exceptions to penalties. (1) No person shall be subject to the penalties of 50-31-506 for having violated subsection (1) or (3) of 50-31-501 if he establishes a guaranty or undertaking signed by and containing the name and address of the person residing in the state of Montana from whom he received in good faith the article to the effect that such article is not adulterated or misbranded within the meaning of this chapter, designating this chapter.

(2) No publisher, radiobroadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under 50-31-506 by reason of the dissemination by him of such false advertisement, unless he has refused, on the request of the department, to furnish the department the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency residing in the state of Montana who causes him to disseminate such advertisement.

History: En. Sec. 5, Ch. 307, L. 1967; R.C.M. 1947, 27-705(b), (c).

Cross-References

Freedom of speech and expression, Art. II, sec. 7, Mont. Const.

50-31-508. Injunction to restrain prohibited acts. In addition to the remedies hereinafter provided, the department is hereby authorized to apply to district court for and such court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction restraining any person from violating any provision of 50-31-204, 50-31-208, 50-31-501, or 50-31-502, irrespective of whether or not there exists an adequate remedy at law.

History: En. Sec. 4, Ch. 307, L. 1967; R.C.M. 1947, 27-704; amd. Sec. 4, Ch. 456, L. 1979.

Cross-References

Injunctions, Title 27, ch. 19.

50-31-509. Detainer of adulterated or misbranded articles. (1) If an agent of the department finds or has probable cause to believe that any food, drug, device, or cosmetic is adulterated or so misbranded as to be dangerous or fraudulent within the meaning of this chapter, he shall affix to the article a tag or other appropriate marking giving notice that the article is or is suspected of being adulterated or misbranded and has been detained or embargoed and warning all persons not to remove or dispose of the article by sale or otherwise until permission for removal or disposal is given by the agent or the court. It is unlawful for a person to remove or dispose of a detained or embargoed article by sale or otherwise without permission. The owner of an embargoed article or another authorized person and the department may enter into a disposal agreement providing for the disposal, reconditioning, or other disposition of the embargoed article. If such an agreement is executed or if the embargo is otherwise removed by the department or the court, neither the department nor the state may be held liable for damages caused by such embargo provided that probable cause existed for its imposition.

(2) If an article detained or embargoed under subsection (1) is found by the agent to be adulterated or misbranded and a disposal agreement is not executed as provided in subsection (1), the agent shall petition the justice of peace, city judge, or district court in whose jurisdiction the article is detained or embargoed for an order for condemnation of the article. If the agent finds that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is adulterated or misbranded, the article shall, after entry of the decree, be destroyed at the expense of the claimant thereof under the supervision of the agent and all court costs and fees and storage and other proper expenses shall be taxed against the claimant of the article or his agent.

(4) If the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after the costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that the article will be so labeled or processed, has been executed, may by order direct that the article be delivered to the claimant thereof for the labeling or processing under the supervision of an agent of the department. The expense of the supervision shall be paid by claimant. The article shall be returned to the claimant on the representation to the court by the department that the article is no longer in violation of this chapter and that the expenses of the supervision have been paid.

History: En. Sec. 6, Ch. 307, L. 1967; amd. Sec. 1, Ch. 187, L. 1977; R.C.M. 1947, 27-706(1) thru (3); amd. Sec. 1, Ch. 158, L. 1981.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Justices' Courts jurisdiction, Title 3, ch. 10, part 3.

City Court jurisdiction, Title 3, ch. 11, part 1.

50-31-510. Condemnation of perishables. Whenever the department or any of its authorized agents find in any room, building, vehicle of transportation, or other structure any meat, seafood, poultry, vegetable, fruit, or other perishable article which is unsound or contains any filthy, decomposed, or putrid substance or that may be poisonous or deleterious to health or otherwise unsafe, the article being hereby declared to be a nuisance, the department or its authorized agent shall immediately condemn or destroy the article or in any other manner render the article unsalable as human food.

History: En. Sec. 6, Ch. 307, L. 1967; amd. Sec. 1, Ch. 187, L. 1977; R.C.M. 1947, 27-706(4).

CHAPTER 32

CONTROLLED SUBSTANCES

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Chapter Cross-References

Dangerous drugs, Title 45, ch. 9.

Model Drug Paraphernalia Act, Title 45, ch. 10, part 1.

Regulation of drugs and drug devices, Title 50, ch. 31, part 3.

Part 1

General Provisions

50-32-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Administer" means the direct application of a dangerous drug, whether by injection, inhalation, ingestion, or other means, to the body of a patient or research subject by:

(a) a practitioner or by the practitioner's authorized agent; or

(b) the patient or research subject at the direction and in the presence of the practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. The term does not include a common or contract carrier, public warehouse operator, or employee of the carrier or warehouse operator.

(3) "Board" means the board of pharmacy provided for in 2-15-1843.

(4) "Bureau" means the drug enforcement administration, United States department of justice, or its successor agency.

(5) "Counterfeit substance" means a dangerous drug that or the container or labeling of a dangerous drug without authorization that bears the trademark, trade name, or other identifying mark, imprint, number, or device or a likeness of an identifying mark, imprint, number, or device of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the drug.

(6) "Dangerous drug" means a drug, substance, or immediate precursor in Schedules I through V set forth in part 2.

(7) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a dangerous drug, whether or not there is an agency relationship.

(8) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(9) "Dispense" means to deliver a dangerous drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the drug for that delivery.

(10) "Dispenser" means a practitioner who dispenses.

(11) "Distribute" means to deliver other than by administering or dispensing a dangerous drug.

(12) "Distributor" means a person who distributes.

(13) (a) "Drug" means:

(i) a substance recognized as a drug in the official United States Pharmacopoeia/National Formulary or any supplement to it;

(ii) a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(iii) a substance, other than food, intended to affect the structure or a function of the body of humans or animals; and

(iv) a substance intended for use as a component of an article specified in subsection (13)(a)(i), (13)(a)(ii), or (13)(a)(iii).

(b) Drug does not include a device or its components, parts, or accessories.

(14) "Hashish", as distinguished from marijuana, means the mechanically processed or extracted plant material that contains tetrahydrocannabinol (THC) and is composed of resin from the cannabis plant.

(15) "Immediate precursor" means a substance that the board finds and by rule designates as being the principal compound commonly used or produced primarily for use and that is an immediate chemical intermediary used or likely to be used in the manufacture of a dangerous drug, the control of which is necessary to prevent, curtail, or limit manufacture.

(16) (a) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a dangerous drug either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis and includes the packaging or repackaging of the drug or labeling or relabeling of its container.

(b) Manufacture does not include the preparation or compounding of a dangerous drug by an individual for personal use or the preparation, compounding, packaging, or labeling of a dangerous drug:

(i) by a practitioner as an incident to the administering or dispensing of a dangerous drug in the course of a professional practice; or

(ii) by a practitioner or the practitioner's authorized agent under the practitioner's supervision for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale.

(17) "Marijuana (marihuana)" means all plant material from the genus cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

(18) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) opium and opiate and a salt, compound, derivative, or preparation of opium or opiate;

(b) a salt, compound, isomer, derivative, or preparation of a salt, compound, isomer, or derivative that is chemically equivalent or identical with any of the drugs referred to in subsection (18)(a), but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw; or

(d) coca leaves and a salt, compound, derivative, or preparation of coca leaves and a salt, compound, isomer, derivative, or preparation of a salt, compound, isomer, or derivative that is chemically equivalent or identical with any of these drugs, but not including decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine.

(19) "Opiate" means a drug having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term does not include, unless specifically designated as a dangerous drug under 50-32-202, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term does include its racemic and levorotatory forms.

(20) "Opium poppy" means the plant of the species papaver somniferum L., except its seeds.

(21) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(22) "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing.

(23) "Practitioner" means:

(a) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state;

(b) a pharmacy or other institution licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state; and

(c) a physician licensed to practice medicine or a dentist licensed to practice dentistry in another state.

(24) "Prescription" has the meaning that it has in 37-7-101.

(25) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a substance or drug regulated under the provisions of this chapter.

(26) "State", when applied to a part of the United States, includes a state, district, commonwealth, territory, insular possession of the United States, and any area subject to the legal authority of the United States of America.

(27) "Ultimate user" means a person who lawfully possesses a dangerous drug for personal use or for the use of a member of the person's household or for administering to an animal owned by the person or by a member of the person's household.

History: En. Sec. 1, Ch. 412, L. 1973; amd. Sec. 1, Ch. 350, L. 1974; amd. Sec. 1, Ch. 382, L. 1975; amd. Sec. 6, Ch. 187, L. 1977; R.C.M. 1947, 54-301; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 12, Ch. 379, L. 1981; amd. Sec. 1, Ch. 155, L. 1983; amd. Sec. 1, Ch. 247, L. 1983; amd. Sec. 1, Ch. 198, L. 1995.

Cross-References

Board of Pharmacy, Title 37, ch. 7, part 2.

50-32-102. Uniformity of construction. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those other states which enact it.

History: En. Sec. 28, Ch. 412, L. 1973; R.C.M. 1947, 54-326.

50-32-103. Board to administer chapter. (1) The board shall administer this chapter and may add drugs to or delete or reschedule all drugs enumerated in the schedules in 50-32-222, 50-32-224, 50-32-226, 50-32-229, or 50-32-232 pursuant to the rulemaking procedures of the Montana Administrative Procedure Act.

(2) The board shall promulgate rules for its administration which are not inconsistent with this chapter and specifically shall levy and the department shall collect reasonable registration fees relating to the registration and control of the manufacture, distribution, and dispensing of dangerous drugs within the state. The maximum fee for any registration shall not exceed $100 per year.

History: En. Secs. 2, 15, Ch. 412, L. 1973; amd. Secs. 2, 5, Ch. 350, L. 1974; R.C.M. 1947, 54-302(part), 54-315.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Board of Pharmacy, Title 37, ch. 7, part 2.

50-32-104. Board's authority limited. Authority to control under 50-32-103 does not extend to distilled spirits, liquor, wine, malt beverages, beer, porter, ale, stout, or tobacco.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(5).

Cross-References

Control of liquor, beer, and wine, Title 16, ch. 3.

50-32-105. Board to conduct educational programs. (1) The board shall carry out educational programs designed to prevent and deter misuse and abuse of dangerous drugs.

(2) In connection with these programs, it may:

(a) promote better recognition of the problems of misuse and abuse of dangerous drugs within the regulated industry and among interested groups and organizations;

(b) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of dangerous drugs;

(c) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(d) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of dangerous drugs;

(e) disseminate the results of research on misuse and abuse of dangerous drugs to promote a better public understanding of what problems exist and what can be done to combat them; and

(f) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of dangerous drugs.

History: En. Sec. 23, Ch. 412, L. 1973; amd. Sec. 11, Ch. 350, L. 1974; R.C.M. 1947, 54-323(1).

Cross-References

Teachers required to complete course in drug and alcohol abuse, 20-25-603.

50-32-106. Board to encourage research. (1) The board shall encourage research on misuse and abuse of dangerous drugs.

(2) In connection with the research and in furtherance of the enforcement of this chapter, it may:

(a) establish methods to assess accurately the effects of dangerous drugs and identify and characterize those with potential for abuse;

(b) make studies and undertake programs of research to:

(i) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this chapter;

(ii) determine patterns of misuse and abuse of dangerous drugs and the social effects thereof; and

(iii) improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of dangerous drugs; and

(c) request the department to enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of dangerous drugs.

(3) The board may authorize persons engaged in research on the use and effects of dangerous drugs to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(4) The board may authorize the possession and distribution of dangerous drugs by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of dangerous drugs to the extent of the authorization.

History: En. Sec. 23, Ch. 412, L. 1973; amd. Sec. 11, Ch. 350, L. 1974; R.C.M. 1947, 54-323(2) thru (4).

Part 2

Scheduling of Dangerous Drugs

Part Cross-References

Municipal powers regarding sale and use of opium and opium products, 7-31-4102.

Regulation of dispensing of drugs by practitioners, Title 37, ch. 2, part 1.

Offenses involving dangerous drugs, Title 45, ch. 9.

50-32-201. General criteria to be considered. In making a determination regarding a drug, the board shall consider the following:

(1) the actual or relative potential for abuse;

(2) the scientific evidence of its pharmacological effect, if known;

(3) the state of current scientific knowledge regarding the drug;

(4) the history and current pattern of abuse;

(5) the scope, duration, and significance of abuse;

(6) the risk to the public health;

(7) the potential of the drug to produce psychic or physiological dependence liability; and

(8) whether the drug is an immediate precursor of a drug already controlled under this chapter.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(part).

50-32-202. Designation of drug as dangerous drug. After considering the factors enumerated in 50-32-201, the board shall make findings with respect thereto, and if it finds the drug has a potential for abuse, it shall designate such drug a dangerous drug in the manner set forth in the Montana Administrative Procedure Act.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(2).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

50-32-203. Effect of rescheduling under federal law. If any drug is designated, rescheduled, or deleted as a "controlled substance" under federal law and notice thereof is given to the board, the board shall similarly control the drug under this chapter after the expiration of 30 days from publication in the federal register of a final order designating a drug as a "controlled substance" or rescheduling or deleting a drug unless, within that 30-day period, the board objects to inclusion, rescheduling, or deletion. In that case, the board shall cause the reasons for objection to be published and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the department shall publish the board's decision which shall be final unless altered thereafter by the board or by statute. Upon publication of objection to inclusion, rescheduling, or deletion under this chapter by the board, control under this chapter is stayed until the board's decision is published.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(4).

50-32-204. Immediate precursors. If the board designates a drug as an immediate precursor, drugs which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(3).

Cross-References

Criminal possession of precursors to dangerous drugs, 45-9-107.

50-32-205. Nonprescription drugs not to be scheduled. The board shall exclude any nonnarcotic drug from a schedule if the drug may, under the Federal Food, Drug, and Cosmetic Act and 50-31-307(2)(b) of the Montana Food, Drug, and Cosmetic Act, be lawfully sold over the counter without a prescription.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(6); amd. Sec. 5, Ch. 472, L. 1989.

50-32-206. Use of names of scheduled drugs. The dangerous drugs listed or to be listed in the schedules in 50-32-222, 50-32-224, 50-32-226, 50-32-229, and 50-32-232 are included by whatever official, common, usual, chemical, or trade name designated.

History: En. Sec. 3, Ch. 412, L. 1973; amd. Sec. 3, Ch. 350, L. 1974; R.C.M. 1947, 54-303.

50-32-207. Order forms for drugs in Schedules I and II. Dangerous drugs in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section unless the board prescribes particular forms to be used.

History: En. Sec. 21, Ch. 412, L. 1973; R.C.M. 1947, 54-321.

50-32-208. Prescription and medical requirements for scheduled drugs — penalty. (1) No dangerous drug in Schedule II may be dispensed without the written prescription of a practitioner.

(2) In emergency situations, as defined by rule of the board, Schedule II drugs may be dispensed upon a practitioner's oral prescription reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of 50-32-309. No prescription for a Schedule II drug may be refilled.

(3) A dangerous drug included in Schedule III or IV, which is a prescription drug as determined under the federal or Montana food, drug, and cosmetic acts, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than 6 months after the date thereof or be refilled more than five times unless renewed by the practitioner.

(4) A dangerous drug included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(5) Any person who violates the provisions of this section is guilty of a misdemeanor and upon conviction may be fined not to exceed $1,000 or be imprisoned in county jail for a term not to exceed 1 year, or both fined and imprisoned.

History: En. Sec. 22, Ch. 412, L. 1973; amd. Sec. 10, Ch. 350, L. 1974; R.C.M. 1947, 54-322; amd. Sec. 13, Ch. 37, L. 1979; amd. Sec. 13, Ch. 379, L. 1981.

Cross-References

Regulation by Board of Pharmacy of sale of drugs and medicine, 37-7-201.

Regulation of prescriptions, Title 37, ch. 7, part 4.

50-32-209. Republication of schedules. The board shall revise and the department shall republish additions, deletions, or other changes to the schedules of dangerous drugs at times determined by the board. For the purposes of this section, the mandate to republish additions, deletions, or other changes is satisfied by publication in the Administrative Rules of Montana pursuant to Title 2, chapter 4.

History: En. Sec. 14, Ch. 412, L. 1973; amd. Sec. 4, Ch. 350, L. 1974; R.C.M. 1947, 54-314; amd. Sec. 14, Ch. 379, L. 1981; amd. Sec. 1, Ch. 113, L. 1997.

50-32-210 through 50-32-220 reserved.

50-32-221. Criteria for placement of drug in Schedule I. The board shall place a drug in Schedule I if it finds that the drug:

(1) has high potential for abuse; and

(2) has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

History: En. Sec. 4, Ch. 412, L. 1973; R.C.M. 1947, 54-304.

50-32-222. Specific dangerous drugs included in Schedule I. Schedule I consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Opiates. Unless specifically excepted or listed in another schedule, any of the following are opiates, including isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation:

(a) acetyl-alpha-methylfentanyl;
(b) acetylmethadol;
(c) allylprodine;
(d) alphacetylmethadol, except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM;
(e) alphameprodine;
(f) alphamethadol;
(g) alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);
(h) alpha-methylthiofentanyl, also known as N-[1-methyl-2-(2-thienyl) ethyl-4-piperidinyl]-N-phenylpropanamide and;
(i) benzethidine;
(j) betacetylmethadol;
(k) beta-hydroxyfentanyl, also known as N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide;
(l) beta-hydroxy-3-methylfentanyl, also known as N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide;
(m) betameprodine;
(n) betamethadol;
(o) betaprodine;
(p) clonitazene;
(q) dextromoramide;
(r) diampromide;
(s) diethylthiambutene;
(t) difenoxin;
(u) dimenoxadol;
(v) dimepheptanol;
(w) dimethylthiambutene;
(x) dioxaphetyl butyrate;
(y) dipipanone;
(z) ethylmethylthiambutene;
(aa) etonitazene;
(bb) etoxeridine;
(cc) furethidine;
(dd) hydroxypethidine;
(ee) ketobemidone;
(ff) levomoramide;
(gg) levophenacylmorphan;
(hh) 3-methylfentanyl, also known as N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide;
(ii) 3-methylthiofentanyl, also known as N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide;
(jj) morpheridine;
(kk) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

(ll) noracymethadol;
(mm) norlevorphanol;
(nn) normethadone;
(oo) norpipanone;
(pp) para-fluorofentanyl, also known as N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]propanamide;
(qq) PEPAP(1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);
(rr) phenadoxone;
(ss) phenampromide;
(tt) phenomorphan;
(uu) phenoperidine;
(vv) piritramide;
(ww) proheptazine;
(xx) properidine;
(yy) propiram;
(zz) racemoramide;
(aaa) thiofentanyl, also known as N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide;
(bbb) tilidine; and
(ccc) trimeperidine.

(2) For the purposes of subsection (1)(hh), the term "isomer" includes the optical, position, and geometric isomers.

(3) Opium derivatives. Unless specifically excepted or listed in another schedule, any of the following are opium derivatives, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:
(a) acetorphine;
(b) acetyldihydrocodeine;
(c) benzylmorphine;
(d) codeine methylbromide;
(e) codeine-n-oxide;
(f) cyprenorphine;
(g) desomorphine;
(h) dihydromorphine;
(i) drotebanol;
(j) etorphine, except hydrochloride salt;
(k) heroin;
(l) hydromorphinol;
(m) methyldesorphine;
(n) methyldihydromorphine;
(o) morphine methylbromide;
(p) morphine methylsulfonate;
(q) morphine-n-oxide;
(r) myrophine;
(s) nicocodeine;
(t) nicomorphine;
(u) normorphine;
(v) pholcodine; and
(w) thebacon.

(4) Hallucinogenic substances. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following is a hallucinogenic substance, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) alpha-ethyltryptamine. Trade or other names include etryptamine, monase, alpha-ethyl-1H-indole-3-ethanamine, 3-(2-aminobutyl) indole, alpha-ET, and AET.

(b) 4-bromo-2,5-dimethoxy-amphetamine. Trade or other names include 4-bromo-2, 5-dimethoxy-alpha-methylphenethylamine and 4-bromo-2,5-DMA.

(c) 4-bromo-2,5-dimethoxyphenethylamine. Trade or other names include 2-(4-bromo-2, 5-dimethoxyphenyl)-1-aminoethane, alpha-desmethylDOB, and 2C-B,Nexus.

(d) 2,5-dimethoxyamphetamine. Trade or other names include 2,5-dimethoxy-alpha-methylphenothylamine and 2,5-DMA.

(e) 3,4-methylenedioxy amphetamine;

(f) 2,5-dimethoxy-4-ethylamphetamine. A trade or other name is DOET.

(g) 4-methoxyamphetamine. A trade or other name is 4-methoxy-alpha-methylphenethylamine.

(h) 5-methoxy-3,4-methylenedioxy amphetamine;

(i) 4-methyl-2,5-dimethoxy-amphetamine. Trade or other names include 4-methyl-2, 5-dimethoxy-alpha-methylphenethylamine, DOM, and STP.

(j) 3,4-methylenedioxy amphetamine;

(k) 3,4-methylenedioxymethamphetamine (MDMA);

(l) 3,4-methylenedioxy-N-ethylamphetamine, also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, and MDEA;

(m) N-hydroxy-3,4-methylenedioxyamphetamine, also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine and N-hydroxy MDA;

(n) 3,4,5-trimethoxy amphetamine;

(o) bufotenine. Trade and other names include 3-(beta-dimethylaminoethyl)-5-hydroxyindole, 3-(2-dimethylaminoethyl)-5-indolol, N,N-dimethylserotonin, 5-hydroxy-N,N-dimethyltryptamine, and mappine.

(p) diethyltryptamine. Trade and other names include N,N-diethyltryptamine and DET.

(q) dimethyltryptamine. A trade or other name is DMT.

(r) ibogaine. Trade or other names include 7-ethyl-6,6beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1', 2':1,2] azepine [5,4-b] indole and tabernanthe iboga.

(s) lysergic acid diethylamide;

(t) marijuana;

(u) mescaline;

(v) parahexyl. Trade or other names include 3-hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,8,9-trimethyl-6H-dibenzo[b,d]pyran and synhexyl.

(w) peyote, meaning all parts of the plant presently classified botanically as lophophora williamsii lemaire, whether growing or not; the seed of the plant; any extract from any part of the plant; and every compound, manufacture, salts, derivatives, mixture, or preparation of the plant, its seed, or extracts;

(x) n-ethyl-3-piperidyl benzilate;

(y) n-methyl-3-piperidyl benzilate;

(z) psilocybin;

(aa) psilocyn;

(bb) tetrahydrocannabinols, including synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis, sp, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity, such as those listed in subsections (4)(bb)(i) through (4)(bb)(iii). Because nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered, are included in the category as follows:

(i) delta 1 (delta 9) cis or trans tetrahydrocannabinol and its optical isomers;

(ii) delta 6 cis or trans tetrahydrocannabinol and its optical isomers; and

(iii) delta 3,4 cis or trans tetrahydrocannabinol and its optical isomers;

(cc) ethylamine analog of phencyclidine. Trade or others names include N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, and PCE.

(dd) pyrrolidine analog of phencyclidine. Trade or other names include 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, and PHP.

(ee) thiophene analog of phencyclidine. Trade or other names include 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine, TPCP, and TCP.

(ff) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine. A trade or other name is TCPy.

(5) For the purposes of subsection (4), the term “isomer” includes the optical, position, and geometric isomers.

(6) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant having a depressant effect on the central nervous system, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) mecloqualone; and

(b) methaqualone.

(7) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) aminorex. Trade or other names include aminoxaphen, 2-amino-5-phenyl-2-oxazoline, and 4,5-dihydro-5-phenyl-2-oxazolamine.

(b) cathinone. Trade or other names include 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone.

(c) fenethylline;

(d) methcathinone. Trade or other names include 2-(methylamino)-propiophenone, alpha-(methylamino)propiophenone, 2-(methylamino)-1-phenylpropan-1-one, alpha-N-methylaminopropiophenone, monomethylpropion, ephedrone, N-methylcathinone, methylcathinone, AL-464, AL-422, AL-463, and UR1432, including its salts, optical isomers, and salts of optical isomers.

(e) (levo-dextro) cis-4-methylaminorex, also known as (levo-dextro) cis-4, 5-dihydro-4-methyl-5-phenyl-2-oxazolamine;

(f) N-ethylamphetamine;

(g) N,N-dimethylamphetamine, also known as N,N-alpha-trimethyl-benzeneethamine and N,N-alpha-trimethylphenethylamine.

(8) Substances subject to emergency scheduling. Any material, compound, mixture, or preparation that contains any quantity of the following substances is included in this category:

(a) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts, and salts of isomers); and

(b) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts, and salts of isomers).

(9) If prescription or administration is authorized by the Federal Food, Drug and Cosmetic Act, then any material, compound, mixture, or preparation containing tetrahydrocannabinols listed in subsection (4) must automatically be rescheduled from Schedule I to Schedule II.

History: En. Sec. 5, Ch. 412, L. 1973; R.C.M. 1947, 54-305; amd. Sec. 1, Ch. 320, L. 1979; amd. Sec. 1, Ch. 141, L. 1983; amd. Sec. 1, Ch. 36, L. 1991; amd. Sec. 2, Ch. 113, L. 1997.

Cross-References

Criminal sale of dangerous drugs, 45-9-101.

Criminal sale of imitation dangerous drugs, 45-9-112.

50-32-223. Criteria for placement of drug in Schedule II. The board shall place a drug in Schedule II if it finds that:

(1) the drug has high potential for abuse;

(2) the drug has currently accepted medical use in treatment in the United States or currently accepted medical use with severe restrictions; and

(3) the abuse of the drug may lead to severe psychic or physical dependence.

History: En. Sec. 6, Ch. 412, L. 1973; R.C.M. 1947, 54-306.

50-32-224. Specific dangerous drugs included in Schedule II. Schedule II consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or listed in another schedule, any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, are included in this category:

(a) opium and opiate and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone and their respective salts, but including the following:

(i) raw opium;
(ii) opium extracts;
(iii) opium fluid;
(iv) powdered opium;
(v) granulated opium;
(vi) tincture of opium;
(vii) codeine;
(viii) ethylmorphine;
(ix) etorphine hydrochloride;
(x) hydrocodone;
(xi) hydromorphone;
(xii) metopon;
(xiii) morphine;
(xiv) oxycodone;
(xv) oxymorphone; and
(xvi) thebaine;

(b) any salt, compound, derivative, or preparation of them that is chemically equivalent or identical with any of the substances referred to in subsection (1)(a), except that these substances do not include the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw;

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves, including cocaine and ecgonine and their salts, isomers, derivatives, and salts of isomers, and derivatives, and any salt, compound, derivative, or preparation of them that is chemically equivalent or identical with any of these substances, except that these substances do not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine; and

(e) concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy.

(2) Opiates. Unless specifically excepted or listed in another schedule, any of the following are opiates, including isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

(a) alfentanil;
(b) alphaprodine;
(c) anileridine;
(d) bezitramide;
(e) bulk dextropropoxyphene (nondosage forms);
(f) carfentanil;
(g) dihydrocodeine;
(h) diphenoxylate;
(i) fentanyl;
(j) isomethadone;

(k) levo-alphacetylmethadol. Other names include levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM.

(l) levomethorphan;

(m) levorphanol;
(n) metazocine;
(o) methadone;
(p) methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
(q) moramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
(r) pethidine, also known as meperidine;
(s) pethidine-intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
(t) pethidine-intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
(u) pethidine-intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
(v) phenazocine;
(w) piminodine;
(x) racemethorphan;
(y) racemorphan; and
(z) sufentanil.

(3) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system:
(a) amphetamine, its salts, optical isomers, and salts of its optical isomers;
(b) phenmetrazine and its salts;
(c) methamphetamine, its salts, isomers, and salts of its isomers; and
(d) methylphenidate.

(4) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant having a depressant effect on the central nervous system, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:
(a) amobarbital;
(b) glutethimide;
(c) pentobarbital;
(d) phencyclidine; and
(e) secobarbital.

(5) Hallucinogenic substances include the following:

(a) dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a federal food and drug administration-approved drug product. Other names for dronabinol include (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b, d]pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol.

(b) nabilone. Another name for nabilone is (levo-dextro)-trans-3-(1, 1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b, d] pyran-9-one.

(6) Immediate precursors. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is an immediate precursor:

(a) phenylacetone, an immediate precursor to amphetamine and methamphetamine. Trade or other names for phenylacetone include phenyl-2-propanone, P2P, benzyl methyl ketone, and methyl benzyl ketone.

(b) 1-phenylcyclohexylamine and 1-piperidinocyclohexanecarbonitrile (PCC), immediate precursors to phencyclidine (PCP).

History: En. Sec. 7, Ch. 412, L. 1973; R.C.M. 1947, 54-307; amd. Sec. 2, Ch. 141, L. 1983; amd. Sec. 2, Ch. 36, L. 1991; amd. Sec. 3, Ch. 113, L. 1997.

Cross-References

Criminal sale of dangerous drugs, 45-9-101.

Criminal sale of imitation dangerous drugs, 45-9-112.

50-32-225. Criteria for placement of drug in Schedule III. The board shall place a drug in Schedule III if it finds that:

(1) the drug has a potential for abuse less than the drugs listed in Schedules I and II;

(2) the drug has currently accepted medical use in treatment in the United States; and

(3) abuse of the drug may lead to moderate or low physical dependence or high psychological dependence.

History: En. Sec. 8, Ch. 412, L. 1973; R.C.M. 1947, 54-308.

50-32-226. Specific dangerous drugs included in Schedule III. Schedule III consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system, including salts, isomers (whether optical, position, or geometric), and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) benzphetamine;

(b) chlorphentermine;

(c) clortermine; and

(d) phendimetrazine.

(2) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant having a depressant effect on the central nervous system:

(a) any compound, mixture, or preparation containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs and one or more other active medicinal ingredients that are not listed in any schedule;

(b) any suppository dosage form containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs approved by the federal food and drug administration for marketing only as a suppository;

(c) any substance that contains any quantity of a derivative of barbituric acid or any salt of barbituric acid;

(d) chlorhexadol;

(e) lysergic acid;

(f) lysergic acid amide;

(g) methyprylon;

(h) sulfondiethylmethane;

(i) sulfonethylmethane;

(j) sulfonmethane; and

(k) tiletamine and zolazepam or any of their salts. A trade or other name for a tiletamine-zolazepam combination product is telazol. A trade or other name for tiletamine is 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. A trade or other name for zolazepam is 4-(2-fluorophenyl)-6,8-dihydro-1,3, 8-trimethylpyrazolo-[3,4-e] [1,4]-diazepin-7(1H)-one, flupyrazapon.

(3) Nalorphine.

(4) Narcotic drugs. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following is a narcotic drug, including its salts calculated as the free anhydrous base or alkaloid in the following limited quantities:

(a) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(b) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(c) not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(d) not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(e) not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(f) not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(g) not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; or

(h) not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Anabolic steroids. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids, that promotes muscle growth. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances is an anabolic steroid, including salts, isomers, and salts of isomers whenever the existence of those salts of isomers is possible within the specific chemical designation:

(a) boldenone;

(b) chlorotestosterone, also known as 4-chlortestosterone;

(c) clostebol;

(d) dihydrochlormethyltestosterone;

(e) dihydrotestosterone, also known as 4-dihydrotestosterone;
(f) drostanolone;
(g) ethylestrenol;
(h) fluoxymesterone;
(i) formebulone, also known as formebolone;
(j) mesterolone;
(k) methandienone;
(l) methandranone;
(m) methandriol;
(n) methandrostenolone;
(o) methenolone;
(p) methyltestosterone;
(q) mibolerone;
(r) nandrolone;
(s) norethandrolone;
(t) oxandrolone;
(u) oxymestrone;
(v) oxymetholone;
(w) stanolone;
(x) stanozolol;
(y) testolactone;
(z) testosterone; or
(aa) trenbolone.

History: En. Sec. 9, Ch. 412, L. 1973; R.C.M. 1947, 54-309(1) thru (4); amd. Sec. 3, Ch. 141, L. 1983; amd. Sec. 3, Ch. 36, L. 1991; amd. Sec. 4, Ch. 42, L. 1991; amd. Sec. 4, Ch. 113, L. 1997.

Cross-References

Criminal sale of dangerous drugs, 45-9-101.

Criminal sale of imitation dangerous drugs, 45-9-112.

50-32-227. Board authorized to exempt certain compounds, mixtures, or preparations from Schedule III. The board may except by rule any compound, mixture, or preparation containing any stimulant or depressant drug listed in 50-32-226(1) and (2) from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the drugs which have a stimulant or depressant effect on the central nervous system.

History: En. Sec. 9, Ch. 412, L. 1973; R.C.M. 1947, 54-309(5).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-32-228. Criteria for placement of drug in Schedule IV. The board shall place a drug in Schedule IV if it finds that:

(1) the drug has a low potential for abuse relative to drugs in Schedule III;

(2) the drug has currently accepted medical use in treatment in the United States; and

(3) abuse of the drug may lead to limited physical dependence or psychological dependence relative to the drugs in Schedule III.

History: En. Sec. 10, Ch. 412, L. 1973; R.C.M. 1947, 54-310.

50-32-229. Specific dangerous drugs included in Schedule IV. Schedule IV consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Narcotic drugs. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic is a drug, including its salts calculated as the free anhydrous base or alkaloid in the following limited quantities:

(a) not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit; and

(b) dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).

(2) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) alprazolam;
(b) barbital;
(c) bromazepam;
(d) camazepam;
(e) chloral betaine;
(f) chloral hydrate;
(g) chlordiazepoxide;
(h) clobazam;
(i) clonazepam;
(j) clorazepate;
(k) clotiazepam;
(l) cloxazolam;
(m) delorazepam;
(n) diazepam;
(o) estazolam;
(p) ethchlorvynol;
(q) ethinamate;
(r) ethyl loflazepate;
(s) fludiazepam;
(t) flunitrazepam;
(u) flurazepam;
(v) halazepam;
(w) haloxazolam;
(x) ketazolam;
(y) loprazolam;
(z) lorazepam;
(aa) lormetazepam;
(bb) mebutamate;
(cc) medazepam;

(dd) meprobamate;
(ee) methohexital;
(ff) methylphenobarbital, also known as mephobarbital;
(gg) midazolam;
(hh) nimetazepam;
(ii) nitrazepam;
(jj) nordiazepam;
(kk) oxazepam;
(ll) oxazolam;
(mm) paraldehyde;
(nn) petrichloral;
(oo) phenobarbital;
(pp) pinazepam;
(qq) prazepam;
(rr) quazepam;
(ss) temazepam;
(tt) tetrazepam;
(uu) triazolam; and
(vv) zolpidem.

(3) Fenfluramine. Any material, compound, mixture, or preparation that contains any quantity of fenfluramine, including its salts, isomers (whether optical, position, or geometric), and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible.

(4) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) cathine;
(b) diethylpropion;
(c) fencamfamin;
(d) fenproporex;
(e) mazindol;
(f) mefenorex;
(g) pemoline, including organometallic complexes and chelates thereof;
(h) phentermine;
(i) pipradrol; and
(j) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(5) Ephedrine.

(a) Except as provided in subsection (5)(b), any material, compound, mixture, or preparation that contains any quantity of ephedrine having a stimulant effect on the central nervous system, including its salts, enantiomers (optical isomers), and salts of enantiomers (optical isomers) when ephedrine is the only active medicinal ingredient or is used in combination with therapeutically insignificant quantities of another active medicinal ingredient.

(b) Ephedrine does not include materials, compounds, mixtures, or preparations labeled in compliance with the Dietary Supplement Health and Education Act of 1994, 21 U.S.C. 321, et seq., that contain only natural ephedra alkaloids or extracts of natural ephedra alkaloids.

(c) Ephedrine may be immediately accessible for use by a licensed physician in a patient care area if it is under the physician's direct supervision.

(6) Other substances. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of pentazocine, including its salts.

History: En. Sec. 11, Ch. 412, L. 1973; R.C.M. 1947, 54-311(1), (2); amd. Sec. 14, Ch. 37, L. 1979; amd. Sec. 4, Ch. 141, L. 1983; amd. Sec. 4, Ch. 36, L. 1991; amd. Sec. 1, Ch. 103, L. 1997; amd. Sec. 5, Ch. 113, L. 1997; amd. Sec. 1, Ch. 253, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 253 inserted (5)(c) allowing immediate accessibility of ephedrine by licensed physician for patient care; and made minor changes in style. Amendment effective April 5, 1999.

Cross-References

Criminal sale of dangerous drugs, 45-9-101.

Criminal sale of imitation dangerous drugs, 45-9-112.

50-32-230. Board authorized to exempt certain compounds, mixtures, or preparations from Schedule IV. The board may except by rule any compound, mixture, or preparation containing any depressant drug listed in 50-32-229 from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the drugs which have a depressant effect on the central nervous system.

History: En. Sec. 11, Ch. 412, L. 1973; R.C.M. 1947, 54-311(3).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-32-231. Criteria for placement of drug in Schedule V. The board shall place a drug in Schedule V if it finds that:

(1) the drug has low potential for abuse relative to the controlled drugs listed in Schedule IV;

(2) the drug has currently accepted medical use in treatment in the United States; and

(3) the drug has limited physical dependence or psychological dependence liability relative to the dangerous drugs listed in Schedule IV.

History: En. Sec. 12, Ch. 412, L. 1973; R.C.M. 1947, 54-312.

50-32-232. Specific dangerous drugs included in Schedule V. Schedule V consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing buprenorphine and its salts is included in this category.

(2) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following is a narcotic drug, including its salts, calculated as the free anhydrous base or alkaloid in limited quantities as set forth in subsections (2)(a) through (2)(f), which include one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

(a) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;
(b) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;
(c) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;
(d) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;
(e) not more than 100 milligrams of opium per 100 milliliters or per 100 grams; and
(f) not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(3) Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of pyrovalerone is a stimulant having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers.

History: En. Sec. 13, Ch. 412, L. 1973; R.C.M. 1947, 54-313; amd. Sec. 15, Ch. 37, L. 1979; amd. Sec. 5, Ch. 141, L. 1983; amd. Sec. 5, Ch. 36, L. 1991; amd. Sec. 6, Ch. 113, L. 1997.

Cross-References

Criminal sale of dangerous drugs, 45-9-101.

Criminal sale of imitation dangerous drugs, 45-9-112.

50-32-233. Exempt anabolic steroid products. The following anabolic steroid-containing compounds, mixtures, or preparations are exempt from this chapter:

(1) androgyn L.A.;
(2) andro-estro 90-4;
(3) depandrogyn;
(4) DEPO-T.E.;
(5) deptestrogen;
(6) duomone;
(7) duratestrin;
(8) duo-span II;
(9) estratest;
(10) estratest HS;
(11) pan estra test;
(12) premarin with methyltestosterone;
(13) synovex H pellets in process;
(14) synovex H pellets in process granulation;
(15) test-estro cypionates;
(16) testagen;
(17) testosterone cyp 50 estradiol cyp 2;
(18) testosterone, cypionate-estradiol, cypionate injection;
(19) testosterone, enanthate-estradiol, valerate injection; and
(20) tilapia sex reversal feed (investigational).

History: En. Sec. 7, Ch. 113, L. 1997.

Part 3
Annual Registration

50-32-301. Annual registration required for manufacturer, distributor, or dispenser. (1) Every person who manufactures, distributes, or dispenses any dangerous drug within this state must obtain annually a registration issued by the department in accordance with board rules.

(2) Persons registered by the board under this chapter to manufacture, distribute, dispense, or conduct research with dangerous drugs may possess, manufacture, distribute, dispense, or conduct research with those drugs to the extent authorized by their registration and in conformity with the other provisions of this chapter.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(1), (2); amd. Sec. 15, Ch. 379, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-32-302. Exceptions to registration requirement. The following persons need not register and may lawfully possess dangerous drugs under this chapter:

(1) an agent or employee of any registered manufacturer, distributor, or dispenser of any dangerous drug if he is acting in the usual course of his business or employment;

(2) a common or contract carrier or warehouseman or an employee thereof, whose possession of any dangerous drug is in the usual course of business or employment;

(3) an ultimate user or a person in possession of any dangerous drug pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V drug;

(4) officers and employees of the state or a political subdivision of the state, while acting in the course of their official duties.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(3).

50-32-303. Waiver of registration requirement for practitioners licensed by federal government. The board shall waive the requirement for registration of practitioners, other than pharmacies, who are registered or licensed by the federal government to dispense dangerous drugs.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(4).

50-32-304. Waiver of registration requirement when in public interest. The board may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(5).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-32-305. Separate registration required. A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses dangerous drugs.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(6).

50-32-306. Criteria for registration of manufacturers and distributors. (1) The board shall register an applicant to manufacture or distribute dangerous drugs included in 50-32-222, 50-32-224, 50-32-226, 50-32-229, and 50-32-232 unless it determines that the issuance of that registration would be inconsistent with the public interest.

(2) In determining the public interest, the board shall consider the following factors:

(a) maintenance of effective controls against diversion of dangerous drugs into other than legitimate medical, scientific, or industrial channels;

(b) compliance with applicable state and local law;

(c) any convictions of the applicant under any federal and state laws relating to any dangerous drug;

(d) past experience in the manufacture or distribution of dangerous drugs and the existence in the applicant's establishment of effective controls against diversion;

(e) furnishing by the applicant of false or fraudulent material in any application filed under this chapter;

(f) suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense dangerous drugs as authorized by federal law; and

(g) any other factors relevant to and consistent with the public health and safety.

(3) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this chapter.

History: En. Sec. 17, Ch. 412, L. 1973; amd. Sec. 7, Ch. 350, L. 1974; R.C.M. 1947, 54-317(1), (4).

50-32-307. Manufacture and distribution limited by registration. Registration under 50-32-306 does not entitle a registrant to manufacture and distribute dangerous drugs in Schedule I or II other than those specified in the registration.

History: En. Sec. 17, Ch. 412, L. 1973; amd. Sec. 7, Ch. 350, L. 1974; R.C.M. 1947, 54-317(2).

50-32-308. Criteria for registration of practitioners. (1) Practitioners shall be registered to dispense any dangerous drugs or to conduct research with dangerous drugs in Schedules II through V if they are authorized to dispense or conduct research under the laws of this state. The board need not require separate registration for practitioners engaging in research with nonnarcotic dangerous drugs in Schedules II through V where the registrant is already registered under this chapter in another capacity.

(2) Practitioners registered under federal law to conduct research with Schedule I drugs may conduct research with Schedule I drugs within this state upon furnishing the board evidence of that federal registration.

History: **En. Sec. 17, Ch. 412, L. 1973; amd. Sec. 7, Ch. 350, L. 1974; R.C.M. 1947, 54-317(3).**

50-32-309. Registrants to maintain records and inventories. Persons registered to manufacture, distribute, or dispense dangerous drugs under this chapter shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of federal law and with any additional rules the board issues.

History: **En. Sec. 20, Ch. 412, L. 1973; R.C.M. 1947, 54-320.**

Cross-References

Prescription requirements, 50-32-208.

50-32-310. Inspections authorized. The board may have the establishment of a registrant or applicant for registration inspected.

History: **En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(7).**

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-32-311. Revocation or suspension of registration. (1) A registration under 50-32-301 to manufacture, distribute, or dispense a dangerous drug may be suspended or revoked by the board upon a finding that the registrant has:

(a) furnished false or fraudulent material information in any application filed under this chapter;

(b) been convicted of a felony under any state or federal law relating to any dangerous drug or controlled substance; or

(c) had his federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances.

(2) The board may limit revocation or suspension of a registration to the particular dangerous drug with respect to which grounds for revocation or suspension exist.

(3) If the board suspends or revokes a registration, all dangerous drugs owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of drugs under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable drugs and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all dangerous drugs may be forfeited to the state.

(4) The board shall promptly cause the bureau to be notified of all orders suspending or revoking registration and all forfeitures of dangerous drugs.

History: **En. Sec. 18, Ch. 412, L. 1973; amd. Sec. 8, Ch. 350, L. 1974; R.C.M. 1947, 54-318.**

50-32-312. Procedure for denial, suspension, revocation of, or refusal to renew registration. (1) Before denying, suspending, or revoking a registration or refusing a renewal of registration, the board shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall require the applicant or registrant to appear before the board at a time and place not less than 30 days after the date of service of the order, but in the case of a denial of renewal of registration, the show cause order shall be served not later than 30 days before the expiration of the registration. These proceedings shall be conducted without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration do not abate the existing registration, which remains in effect pending the outcome of the administrative hearing.

(2) The board may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under 50-32-311 or whenever renewal of registration is refused if it finds that there is an imminent danger to the public health or safety which warrants such action. The suspension continues in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction.

History: En. Sec. 19, Ch. 412, L. 1973; amd. Sec. 9, Ch. 350, L. 1974; amd. Sec. 7, Ch. 187, L. 1977; R.C.M. 1947, 54-319.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

Judicial review, Title 2, ch. 4, part 7.

50-32-313. Practitioner's failure to register a misdemeanor. Practitioners who fail or refuse to register as required by this chapter shall be guilty of a misdemeanor and upon conviction therefor may be fined not to exceed $1,000, imprisoned in the county jail not to exceed 1 year, or both.

History: En. Sec. 29, Ch. 412, L. 1973; R.C.M. 1947, 54-327.

50-32-314. Board to adopt rules for registration of ambulatory surgical facilities. (1) The board shall, by October 1, 1999, adopt rules to provide for the registration of ambulatory surgical facilities pursuant to this part. The rules must categorize ambulatory surgical facilities as a "distributor" pursuant to 50-32-101(12) or other category of registrant as determined by the board.

(2) If the board determines that ambulatory surgical facilities require the services of a pharmacist in order to be registered, the board shall allow those facilities to use the services of a consulting pharmacist to satisfy the obligation imposed by the board.

(3) This section does not affect any existing requirement that persons providing dangerous drugs to an ambulatory surgical facility or persons administering dangerous drugs within or as the result of procedures performed at an ambulatory surgical facility be registered pursuant to this part.

History: En. Sec. 1, Ch. 273, L. 1999.

Compiler's Comments

Effective Date: Section 3, Ch. 273, L. 1999, provided that this section is effective on passage and approval. Approved April 6, 1999.

Part 4

Transfer of Precursors to Controlled Substances

50-32-401. Report required for precursor to controlled substance. (1) A manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any of the following substances to a person in this state must submit a report to the department of justice detailing all such transactions:

(a) phenyl-2-propanone;
(b) methylamine;
(c) d-lysergic acid;
(d) ergotamine tartrate;
(e) diethyl malonate;
(f) malonic acid;
(g) ethyl malonate;
(h) barbituric acid; and
(i) piperidine.

(2) The department of justice may adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act that add or delete substances to the list of regulated substances detailed in subsection (1), if the substance is a precursor to a dangerous drug as defined in 50-32-101.

(3) This section does not apply to any of the following:

(a) a pharmacist or other authorized person who sells or furnishes the substance upon the prescription of a physician, dentist, podiatrist, or veterinarian;

(b) a physician, dentist, podiatrist, or veterinarian who administers or furnishes the substance to his patients;

(c) a manufacturer or wholesaler licensed by the board of pharmacy who sells, transfers, or otherwise furnishes the substance to a licensed pharmacist, physician, dentist, podiatrist, or veterinarian;

(d) transfers of the substances listed in subsection (1) within any college or university to an employee or student of the college or university for the purpose of teaching or research authorized by the college or university.

History: En. Sec. 1, Ch. 227, L. 1979; amd. Sec. 1, Ch. 247, L. 1983.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

50-32-402. Reports required — exceptions. (1) Except as provided in subsection (2), a manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance regulated pursuant to 50-32-401 to a person in this state must, within 72 hours, submit a report of the transaction to the department of justice.

(2) The department may authorize the submission of the reports on a monthly basis for repeated, regular transactions between the furnisher and the recipient involving the same substance, if the department determines:

(a) a pattern of regular supply of the substance exists as between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes the substance and the recipient of the substance; and

(b) the recipient has established a record of use of the substance for lawful purposes.

History: En. Sec. 2, Ch. 227, L. 1979.

Cross-References

Department of Justice, Title 2, ch. 15, part 20.

Duty to report prescriptions issued to drug addicts, 37-2-111.

50-32-403. Common reporting form. (1) The department of justice must provide a common reporting form for the report required under 50-32-401.

(2) The form must contain the following information:

(a) name of the substance;

(b) quantity of the substance sold, transferred, or furnished;

(c) the date the substance was sold, transferred, or furnished;

(d) the name and address of the person buying or receiving the substance; and

(e) the name and address of the manufacturer, wholesaler, or retailer.

History: En. Sec. 3, Ch. 227, L. 1979.

Cross-References

Department of Justice, Title 2, ch. 15, part 20.

50-32-404. Loss, theft, or other discrepancy to be reported. (1) The theft or loss of a substance regulated in accordance with 50-32-401 must be reported to the department of justice within 3 days after the theft or loss is discovered.

(2) Any difference between the quantity received of any substance regulated as provided in 50-32-401 and the quantity shipped must be reported to the department of justice within 3 days of the discovery of the discrepancy.

(3) A report made pursuant to this section shall also include the name of the common carrier or person who transported the substance and the date of shipment.

History: En. Sec. 4, Ch. 227, L. 1979.

Cross-References

Department of Justice, Title 2, ch. 15, part 20.

50-32-405. Violation — penalties. (1) A person commits the offense of failure to report distribution of a precursor to a controlled substance if the person purposely or knowingly fails to report the sale, transfer, or other furnishing of a substance regulated by 50-32-401.

(2) A person convicted of failing to report the distribution of a precursor to a controlled substance shall be fined not more than $10,000 or be imprisoned in the state prison for not more than 10 years, or both.

History: En. Sec. 5, Ch. 227, L. 1979; amd. Sec. 20, Ch. 432, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 432 in (1) and (2) after "report" substituted "distribution" for "sale or transfer"; and made minor changes in style. Amendment effective October 1, 1999.

CHAPTER 33

BLOOD AND BLOOD PRODUCTS

Part 1 — General Provisions

50-33-101. Labeling of containers by blood banks required.
50-33-102. Furnishing of blood, blood products, and human tissue, organs, or bones declared service and not sale.
50-33-103. Immunity of physicians and hospitals.
50-33-104. Immunity of blood banks and tissue banks.

Chapter Cross-References

AIDS education and prevention, Title 50, ch. 16, part 10.

Part 1
General Provisions

50-33-101. Labeling of containers by blood banks required. Each container or package containing any whole blood, plasma, blood products, or blood derivatives sold by a blood bank shall have plainly stamped or printed thereon the fact that the product therein was tested as required in 50-33-104, giving the date of the test and such information as is necessary to designate the type of test made.

History: En. Sec. 3, Ch. 284, L. 1971; R.C.M. 1947, 69-2205.

50-33-102. Furnishing of blood, blood products, and human tissue, organs, or bones declared service and not sale. The furnishing of and the injecting, transfusing, transplanting, or transferring into the human body of whole blood, plasma, blood products, blood derivatives, human tissue, organs, or bones by a hospital, long-term care facility, or doctor of any such substances obtained from any source which said hospital, long-term care facility, or doctor is not directly or indirectly financially interested in or has any control over is hereby declared not to be a sale of such whole blood, plasma, blood products, blood derivatives, human tissue, organs, or bones for any purpose.

History: En. Sec. 1, Ch. 284, L. 1971; amd. Sec. 1, Ch. 76, L. 1975; R.C.M. 1947, 69-2203(part); amd. Sec. 1, Ch. 401, L. 1987.

Cross-References

Sale as defined in Uniform Commercial Code, 30-2-106.

50-33-103. Immunity of physicians and hospitals. No physician, long-term care facility, or hospital may be held liable, in the absence of fault or negligence on the part of such a hospital, long-term care facility, or doctor, for injuries resulting from the furnishing or performing of such services.

History: En. Sec. 1, Ch. 284, L. 1971; amd. Sec. 1, Ch. 76, L. 1975; R.C.M. 1947, 69-2203(part).

Cross-References

Liability, Title 27, ch. 1, part 7.

Good Samaritan law, 27-1-714.

Validity of consent to medical treatment, Title 41, ch. 1, part 4.

50-33-104. Immunity of blood banks and tissue banks. No blood bank or tissue bank may be held liable in the absence of fault or negligence for injuries resulting from the injecting, transfusing, transplanting, or transferring of whole blood, plasma, blood products, blood derivatives, human tissue, organs, or bones supplied by any such blood bank or tissue bank to any hospital or physician if such blood products or tissue products have been tested by the latest testing procedures in accordance with recommendations of the American association of blood banks or the American association of tissue banks and by such test are not found to be dangerous to the health of the recipient of such blood products or tissue products.

History: En. Sec. 2, Ch. 284, L. 1971; R.C.M. 1947, 69-2204; amd. Sec. 2, Ch. 401, L. 1987.

CHAPTER 34

FLOUR AND BREAD

(Repealed. Sec. 1, Ch. 182, L. 1995)

Chapter Compiler's Comments

Histories of Repealed Sections:

50-34-101. En. Sec. 1, Ch. 274, L. 1971; amd. Sec. 5, Ch. 349, L. 1974; R.C.M. 1947, 27-801.

50-34-102. En. Sec. 4, Ch. 274, L. 1971; amd. Sec. 6, Ch. 349, L. 1974; R.C.M. 1947, 27-804(1).

50-34-103. En. Sec. 4, Ch. 274, L. 1971; amd. Sec. 6, Ch. 349, L. 1974; R.C.M. 1947, 27-804(4), (5).

50-34-104. En. Sec. 4, Ch. 274, L. 1971; amd. Sec. 6, Ch. 349, L. 1974; R.C.M. 1947, 27-804(6).

50-34-105. En. Sec. 2, Ch. 274, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-802(part).

50-34-106. En. Sec. 2, Ch. 274, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-802(part).

50-34-107. En. Sec. 3, Ch. 274, L. 1971; R.C.M. 1947, 27-803(part).

50-34-108. (1)En. Sec. 3, Ch. 274, L. 1971; Sec. 27-803, R.C.M. 1947; (2)En. Sec. 4, Ch. 274, L. 1971; amd. Sec. 6, Ch. 349, L. 1974; Sec. 27-804, R.C.M. 1947; R.C.M. 1947, 27-803(part), 27-804(2).

50-34-109. En. Sec. 4, Ch. 274, L. 1971; amd. Sec. 6, Ch. 349, L. 1974; R.C.M. 1947, 27-804(3).

50-34-110. En. Sec. 5, Ch. 274, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 4, Ch. 187, L. 1977; R.C.M. 1947, 27-805.

CHAPTER 35

IMPORTED MEATS

(Repealed. Sec. 1, Ch. 136, L. 1981)

Chapter Compiler's Comments

Histories of Repealed Sections:

50-35-101. En. 27-320 by Sec. 3, Ch. 415, L. 1975; R.C.M. 1947, 27-320.

50-35-102. En. 27-318 by Sec. 1, Ch. 415, L. 1975; R.C.M. 1947, 27-318(part).

50-35-103. En. 27-318 by Sec. 1, Ch. 415, L. 1975; R.C.M. 1947, 27-318(part); amd. Sec. 1, Ch. 278, L. 1979.

50-35-104. En. 27-319 by Sec. 2, Ch. 415, L. 1975; R.C.M. 1947, 27-319; amd. Sec. 2, Ch. 278, L. 1979.

50-35-105. En. Sec. 3, Ch. 278, L. 1979.

CHAPTER 36

MATTRESSES — SHODDY CONTROL

(Repealed. Sec. 1, Ch. 181, L. 1995)

Chapter Compiler's Comments

Histories of Repealed Sections:

50-36-101. (1)En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; (2)En. Sec. 114, Ch. 197, L. 1967; Sec. 69-4701, R.C.M. 1947; R.C.M. 1947, 69-4102(2), 69-4701.

50-36-102. En. Sec. 117, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4704.

50-36-103. En. Sec. 118, Ch. 197, L. 1967; amd. Secs. 107 and 109, Ch. 349, L. 1974; R.C.M. 1947, 69-4705.

50-36-104. En. Sec. 115, Ch. 197, L. 1967; amd. Sec. 104, Ch. 349, L. 1974; R.C.M. 1947, 69-4702.

50-36-105. En. Sec. 116, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4703.

50-36-106. En. Sec. 119, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4706.

50-36-107. En. Sec. 120, Ch. 197, L. 1967; R.C.M. 1947, 69-4707.

CHAPTER 37

FIREWORKS

Part 1 — General Provisions

50-37-101. Fireworks defined.
50-37-102. Where chapter not to apply.
50-37-103. Unlawful sale, transportation, or use of fireworks.
50-37-104. Lawful sales or uses of fireworks — "no smoking" sign — wholesaler's permit.
50-37-105. Permissible fireworks.
50-37-106. Sale of fireworks restricted to certain dates.
50-37-107. Supervised public display of fireworks authorized.
50-37-108. Damage indemnity bond required for public display.
50-37-109. Confiscation.
50-37-110. Penalties.

Chapter Cross-References

Municipal power to regulate bonfires, fireworks, explosives, and inflammable materials, 7-33-4205, 7-33-4206.

Unlawful sale of fireworks, 45-5-623.

Part 1
General Provisions

50-37-101. Fireworks defined. The term "fireworks" means any combustible or explosive composition or any substance, combination of substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation and includes sky rockets, roman candles, daygo bombs, blank cartridges, toy cannons, toy canes, or toy guns in which explosives other than toy paper caps are used, the type of balloons which require fire underneath to propel them, firecrackers, torpedoes, sparklers or other fireworks of like construction, any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance.

History: En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977; R.C.M. 1947, 69-2701(part).

50-37-102. Where chapter not to apply. (1) Nothing in this chapter shall be construed to prohibit the sale of any kind of fireworks to a person holding a permit issued under 50-37-107 at the display covered by such permits, the use of fireworks by railroads or other transportation agencies for signal purposes or illumination or when used in quarrying or blasting or other industrial use, or the sale or use of blank cartridges for a show or theater, for signal or ceremonial purposes in athletics or sports, or for use by military organizations or organizations composed of veterans of the United States armed forces.

(2) This chapter does not apply to toy paper caps containing less than one-fourth of a grain of explosive composition per cap, to the manufacture, storage, sale, or use of signals necessary for the safe operation of railroads or other classes of public or private transportation, to the military or naval forces

of the United States or this state, to peace officers, or to the sale or use of blank cartridges for ceremonial, theatrical, or athletic events.

(3) Nothing in this chapter authorizes the sale of fireworks in a city or town that has banned the sale of fireworks within the city or town as authorized in 7-33-4206.

History: (1)En. Sec. 5, Ch. 143, L. 1947; amd. Sec. 3, Ch. 273, L. 1959; Sec. 69-2704, R.C.M. 1947; (2)En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977; Sec. 69-2701, R.C.M. 1947; R.C.M. 1947, 69-2701(part), 69-2704; amd. Sec. 16, Ch. 37, L. 1979; amd. Sec. 4, Ch. 140, L. 1985; amd. Sec. 1, Ch. 410, L. 1989.

Cross-References

Municipal power to regulate fireworks, 7-33-4206.

50-37-103. Unlawful sale, transportation, or use of fireworks. (1) It is unlawful to possess, sell, transport, or use any fireworks within the state except as provided in this chapter.

(2) It is unlawful for an individual under the age of 18 to possess for sale, sell, or offer for sale within the state permissible fireworks enumerated in 50-37-105.

(3) It is unlawful for a wholesaler to sell or offer for sale within the state fireworks without a current fireworks wholesaler permit or in violation of 50-37-105. It is lawful for a wholesaler, however, to transport fireworks within Montana for sale outside of the state.

(4) It is unlawful to sell or offer for sale fireworks as defined in 50-37-101 or permissible fireworks as enumerated in 50-37-105 by mail order solicitation.

(5) It is unlawful to sell or offer for sale fireworks as defined in 50-37-101 or permissible fireworks as enumerated in 50-37-105 within 300 feet of a hospital or church.

(6) It is unlawful for an individual, firm, partnership, or corporation to discharge or cause to be discharged any pyrotechnics, fireworks as defined in 50-37-101, or permissible fireworks as enumerated in 50-37-105:

(a) within the exterior boundaries of a state forest, state park, or state recreation area;

(b) within 100 feet of a fireworks retail sales location;

(c) from, inside, or toward a motor vehicle; or

(d) in the vicinity of another person or group of people or any animal in a manner likely to expose them to the risk of injury.

History: En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977; R.C.M. 1947, 69-2701(1), (5), (6), (8); amd. Sec. 1, Ch. 598, L. 1985.

Cross-References

State parks, Title 23, ch. 1, part 1.

Unlawful sale of fireworks, 45-5-623.

50-37-104. Lawful sales or uses of fireworks — "no smoking" sign — wholesaler's permit. (1) Subject to subsection (2) it is lawful for an individual, firm, partnership, corporation, or association to possess for sale, sell or offer for sale at retail, or use within the state the permissible fireworks enumerated in 50-37-105. At any place where permissible fireworks are sold or displayed, a sign reading "NO SMOKING" must be posted in letters at least 4 inches in height where customers are most likely to read it.

(2) Before a fireworks wholesaler may lawfully possess for sale, offer for sale, or sell within the state the permissible fireworks enumerated in 50-37-105, the wholesaler must obtain a fireworks wholesaler permit from the department of commerce.

(3) A person making application for a fireworks wholesaler permit shall:

(a) pay an application fee to the department of commerce, which must be set by the department of commerce commensurate with costs; and

(b) furnish proof under oath, on a form provided by the department, that he:

(i) is at least 18 years of age;

(ii) is of good moral character; and

(iii) has not been convicted of a crime involving the use, possession, or sale of fireworks.

(4) The department of commerce shall adopt rules implementing this section.

History: En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977; R.C.M. 1947, 69-2701(3); amd. Sec. 2, Ch. 598, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Department of Commerce, Title 2, ch. 15, part 18.

50-37-105. Permissible fireworks. Permissible fireworks, excluding sky rockets, roman candles, and bottle rockets, include and are limited to those that meet the definition of "common fireworks" as set forth in the U.S. department of transportation's Hazardous Materials Regulations, 49 CFR, parts 173.88 and 173.100, as they read on January 1, 1985, and that comply with the construction, chemical composition, and labeling regulations of the U.S. consumer product safety commission, as set forth in 16 CFR, part 1507, as it read on January 1, 1985.

History: En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977; R.C.M. 1947, 69-2701(4); amd. Sec. 3, Ch. 598, L. 1985.

50-37-106. Sale of fireworks restricted to certain dates. No person, firm, or corporation may offer fireworks of any kind for sale at retail before June 24 and after July 5.

History: En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977; R.C.M. 1947, 69-2701(7); amd. Sec. 1, Ch. 284, L. 1999.

Compiler's Comments

1999 Amendments Not Codified: Because of the temporary nature of the changes made by sec. 1, Ch. 284, L. 1999, the code commissioner has not codified the following amendments: Section 1, Ch. 284, at beginning of (1) inserted exception clause; inserted (2) allowing sale of fireworks on December 30 and 31, 1999; and made minor changes in style. Amendment effective October 1, 1999, and terminates January 1, 2000.

50-37-107. Supervised public display of fireworks authorized. (1) The state fire prevention and investigation program of the department of justice or the governing body of a city, town, or county may, under reasonable rules adopted by them, grant permits for supervised public displays of fireworks to be held by municipalities, fair associations, amusement parks, and other organizations or groups of individuals.

(2) Each display shall:

(a) be handled by a competent operator, who must be approved by the state fire prevention and investigation program or the governing body of the city, town, or county in which the display is to be held; and

(b) be located, discharged, or fired as, in the opinion of the state fire prevention and investigation program or the chief of the fire department or other officer designated by the governing body of the city, town, or county after proper inspection, not to be hazardous to persons or property.

(3) Application for permits shall be made in writing at least 15 days prior to the date of the display.

(4) After the privilege has been granted, sales, possession, use, and distribution of fireworks for the display are lawful for that purpose only.

(5) No permit granted under this section is transferable.

History: En. Sec. 3, Ch. 143, L. 1947; amd. Sec. 2, Ch. 273, L. 1959; amd. Sec. 18, Ch. 187, L. 1977; R.C.M. 1947, 69-2702; amd. Sec. 1, Ch. 164, L. 1981; amd. Sec. 5, Ch. 140, L. 1985; amd. Sec. 1, Ch. 706, L. 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

State fire prevention and investigation program, 2-15-2005; Title 50, ch. 3.

50-37-108. Damage indemnity bond required for public display. The state fire prevention and investigation program or the governing body of the city, town, or county shall require a bond considered adequate by the state fire prevention and investigation program or governing body from the licensee in a sum not less than $500, conditioned for the payment of all damages which may be caused either to a person or persons or to property by reason of the licensed display and arising from any acts of the licensee, his agents, employees, or subcontractors.

History: En. Sec. 4, Ch. 143, L. 1947; R.C.M. 1947, 69-2703; amd. Sec. 6, Ch. 140, L. 1985; amd. Sec. 1, Ch. 706, L. 1991.

Cross-References

Indemnity, Title 28, ch. 11, part 3.

50-37-109. Confiscation. A representative of the state fire prevention and investigation program or any sheriff, police officer, or constable shall seize, take, remove, or cause to be removed at the expense of the owner all stocks of fireworks or combustibles offered or exposed for sale, stored, or held in violation of this chapter.

History: En. Sec. 6, Ch. 143, L. 1947; R.C.M. 1947, 69-2705; amd. Sec. 1, Ch. 706, L. 1991.

Cross-References

State fire prevention and investigation program, 2-15-2005; Title 50, ch. 3.

50-37-110. Penalties. Any person, firm, partnership, association, or corporation violating the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $100 or more than $500 or, in the case of individuals, the members of a partnership, and the responsible officers and agents of an association or corporation, by imprisonment in the county jail for a period of not less than 30 days or more than 6 months or by both such fine and imprisonment.

History: En. Sec. 7, Ch. 143, L. 1947; amd. Sec. 4, Ch. 273, L. 1959; R.C.M. 1947, 69-2706.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

CHAPTER 38

EXPLOSIVES

(Repealed. Sec. 3, Ch. 187, L. 1985)

Chapter Compiler's Comments

Histories of Repealed Sections:

50-38-101. En. Sec. 1, Ch. 129, L. 1917; re-en. Sec. 2786, R.C.M. 1921; re-en. Sec. 2786, R.C.M. 1935; R.C.M. 1947, 69-1901.

50-38-102. En. Sec. 19, Ch. 129, L. 1917; re-en. Sec. 2804, R.C.M. 1921; re-en. Sec. 2804, R.C.M. 1935; R.C.M. 1947, 69-1919.

50-38-103. En. Sec. 2, Ch. 129, L. 1917; re-en. Sec. 2787, R.C.M. 1921; re-en. Sec. 2787, R.C.M. 1935; R.C.M. 1947, 69-1902(part).

50-38-104. En. Sec. 2, Ch. 129, L. 1917; re-en. Sec. 2787, R.C.M. 1921; re-en. Sec. 2787, R.C.M. 1935; R.C.M. 1947, 69-1902(part).

50-38-105. En. Sec. 18, Ch. 129, L. 1917; re-en. Sec. 2803, R.C.M. 1921; re-en. Sec. 2803, R.C.M. 1935; R.C.M. 1947, 69-1918.

50-38-106. En. Sec. 714, Pen. C. 1895; re-en. Sec. 8552, Rev. C. 1907; re-en. Sec. 2813, R.C.M. 1921; re-en. Sec. 2813, R.C.M. 1935; R.C.M. 1947, 69-1928.

50-38-107. En. Sec. 715, Pen. C. 1895; re-en. Sec. 8553, Rev. C. 1907; re-en. Sec. 2814, R.C.M. 1921; re-en. Sec. 2814, R.C.M. 1935; amd. Sec. 56, Ch. 359, L. 1977; R.C.M. 1947, 69-1929; amd. Sec. 7, Ch. 198, L. 1981.

50-38-108. En. Sec. 1, Ch. 124, L. 1909; re-en. Sec. 2805, R.C.M. 1921; re-en. Sec. 2805, R.C.M. 1935; R.C.M. 1947, 69-1920.

50-38-201. En. Sec. 12, Ch. 129, L. 1917; re-en. Sec. 2797, R.C.M. 1921; re-en. Sec. 2797, R.C.M. 1935; R.C.M. 1947, 69-1912.

50-38-202. En. Sec. 14, Ch. 129, L. 1917; re-en. Sec. 2799, R.C.M. 1921; re-en. Sec. 2799, R.C.M. 1935; R.C.M. 1947, 69-1914.

50-38-203. En. Sec. 708, Pen. C. 1895; re-en. Sec. 8546, Rev. C. 1907; re-en. Sec. 2807, R.C.M. 1921; re-en. Sec. 2807, R.C.M. 1935; R.C.M. 1947, 69-1922.

50-38-204. En. Sec. 709, Pen. C. 1895; re-en. Sec. 8547, Rev. C. 1907; re-en. Sec. 2808, R.C.M. 1921; re-en. Sec. 2808, R.C.M. 1935; amd. Sec. 14, Ch. 187, L. 1977; R.C.M. 1947, 69-1923.

50-38-205. En. Sec. 6, Ch. 129, L. 1917; re-en. Sec. 2791, R.C.M. 1921; re-en. Sec. 2791, R.C.M. 1935; R.C.M. 1947, 69-1906(part).

50-38-206. En. Sec. 6, Ch. 129, L. 1917; re-en. Sec. 2791, R.C.M. 1921; re-en. Sec. 2791, R.C.M. 1935; R.C.M. 1947, 69-1906(part).

50-38-207. En. Sec. 8, Ch. 129, L. 1917; re-en. Sec. 2793, R.C.M. 1921; R.C.M. 1947, 69-1908.

50-38-208 through 50-38-210 reserved.

50-38-211. En. Sec. 3, Ch. 129, L. 1917; re-en. Sec. 2788, R.C.M. 1921; re-en. Sec. 2788, R.C.M. 1935; R.C.M. 1947, 69-1903(part).

50-38-212. En. Sec. 3, Ch. 129, L. 1917; re-en. Sec. 2788, R.C.M. 1921; re-en. Sec. 2788, R.C.M. 1935; R.C.M. 1947, 69-1903(part).

50-38-213. En. Sec. 3, Ch. 129, L. 1917; re-en. Sec. 2788, R.C.M. 1921; re-en. Sec. 2788, R.C.M. 1935; R.C.M. 1947, 69-1903(part).

50-38-214. En. Sec. 5, Ch. 129, L. 1917; re-en. Sec. 2790, R.C.M. 1921; re-en. Sec. 2790, R.C.M. 1935; R.C.M. 1947, 69-1905.

50-38-215. En. Sec. 4, Ch. 129, L. 1917; re-en. Sec. 2789, R.C.M. 1921; re-en. Sec. 2789, R.C.M. 1935; R.C.M. 1947, 69-1904.

50-38-216 through 50-38-220 reserved.

50-38-221. En. Sec. 7, Ch. 129, L. 1917; re-en. Sec. 2792, R.C.M. 1921; re-en. Sec. 2792, R.C.M. 1935; R.C.M. 1947, 69-1907(part).

50-38-222. En. Sec. 7, Ch. 129, L. 1917; re-en. Sec. 2792, R.C.M. 1921; re-en. Sec. 2792, R.C.M. 1935; R.C.M. 1947, 69-1907(a).

50-38-223. En. Sec. 7, Ch. 129, L. 1917; re-en. Sec. 2792, R.C.M. 1921; re-en. Sec. 2792, R.C.M. 1935; R.C.M. 1947, 69-1907(b).

50-38-224 through 50-38-230 reserved.

50-38-231. En. Sec. 9, Ch. 129, L. 1917; re-en. Sec. 2794, R.C.M. 1921; re-en. Sec. 2794, R.C.M. 1935; R.C.M. 1947, 69-1909(part).

50-38-232. En. Sec. 9, Ch. 129, L. 1917; re-en. Sec. 2794, R.C.M. 1921; re-en. Sec. 2794, R.C.M. 1935; R.C.M. 1947, 69-1909(part).

50-38-233. En. Sec. 9, Ch. 129, L. 1917; re-en. Sec. 2794, R.C.M. 1921; re-en. Sec. 2794, R.C.M. 1935; R.C.M. 1947, 69-1909(part).

50-38-234. En. Sec. 9, Ch. 129, L. 1917; re-en. Sec. 2794, R.C.M. 1921; re-en. Sec. 2794, R.C.M. 1935; R.C.M. 1947, 69-1909(part).

50-38-235. En. Sec. 9, Ch. 129, L. 1917; re-en. Sec. 2794, R.C.M. 1921; re-en. Sec. 2794, R.C.M. 1935; R.C.M. 1947, 69-1909(part); amd. Sec. 2, Ch. 239, L. 1983.

50-38-301. En. Sec. 707, Pen. C. 1895; re-en. Sec. 8545, Rev. C. 1907; re-en. Sec. 2806, R.C.M. 1921; re-en. Sec. 2806, R.C.M. 1935; R.C.M. 1947, 69-1921.

50-38-302. En. Sec. 2, Ch. 129, L. 1917; re-en. Sec. 2787, R.C.M. 1921; re-en. Sec. 2787, R.C.M. 1935; R.C.M. 1947, 69-1902(part).

50-38-303. En. Sec. 1, p. 246, L. 1897; re-en. Sec. 8550, Rev. C. 1907; re-en. Sec. 2811, R.C.M. 1921; re-en. Sec. 2811, R.C.M. 1935; R.C.M. 1947, 69-1926.

50-38-304. En. Sec. 711, Pen. C. 1895; re-en. Sec. 8549, Rev. C. 1907; re-en. Sec. 2810, R.C.M. 1921; re-en. Sec. 2810, R.C.M. 1935; amd. Sec. 15, Ch. 187, L. 1977; R.C.M. 1947, 69-1925; amd. Sec. 17, Ch. 37, L. 1979.

CHAPTER 39

FIRE PROTECTION EQUIPMENT

Part 1 — Regulation of Sales, Installation, and Servicing

50-39-101. License and endorsements required.
50-39-102. Application for license and endorsements.
50-39-103. Inspections, examinations, and hearings authorized.
50-39-104. Repealed.
50-39-105. Fees.
50-39-106. Deposit of fees.
50-39-107. Rulemaking authority.
50-39-108. Definitions.

Part 2 — Standardization
(Repealed. Sec. 37, Ch. 706, L. 1991)

Part 1

Regulation of Sales, Installation, and Servicing

50-39-101. License and endorsements required. (1) A person or entity shall obtain a license from the department of commerce before engaging in the business of servicing fire extinguishers or before engaging in the business of selling, servicing, or installing fire alarm systems, special agent fire suppression systems, or fire extinguishing systems. Each individual, except an apprentice, employed by the licensee to perform services under the license shall obtain from the department an endorsement to sell, service, or install:

(a) fire alarm systems;
(b) special agent fire suppression systems; or
(c) fire extinguishing systems.

(2) The license and endorsement or endorsements must be prominently displayed at the business premises, and copies must be carried by the person conducting each installation or servicing and must be shown to anyone requesting to see them.

(3) It is a misdemeanor to knowingly or purposely service a fire extinguisher or sell, service, or install a fire alarm system, special agent fire suppression system, or fire extinguishing system without the required license and endorsement.

(4) Nothing in this chapter may be construed to prohibit a licensed electrician, practicing within the scope of practice of electricians, as provided in Title 37, chapter 68, from installing components of fire protection equipment if the installation is inspected and approved by an individual endorsed to sell, service, or install fire protection equipment.

History: En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975; R.C.M. 1947, 82-1202.1(part); amd. Sec. 9, Ch. 706, L. 1991; amd. Sec. 1, Ch. 396, L. 1993; amd. Sec. 4, Ch. 514, L. 1995; amd. Sec. 42, Ch. 481, L. 1997.

Cross-References

State fire prevention and investigation program, 2-15-2005; Title 50, ch. 3.

50-39-102. Application for license and endorsements. (1) An application for a license and any endorsements must be made on a form prescribed by the department of commerce.

(2) The department shall issue a license and endorsement to an applicant who:

(a) submits satisfactory proof that the applicant is properly equipped and staffed to provide the sales or services to be licensed and endorsed; and

(b) submits satisfactory proof that the applicant is insured to engage in the business covered by the license and endorsement or endorsements.

(3) The department shall:

(a) issue an endorsement to an applicant who scores a passing grade on an examination devised or approved by the department;

(b) issue an endorsement to an applicant who has been issued a letter of certification, specific to the endorsement being sought, from any national testing agency approved by the department; and

(c) renew the endorsement at the time intervals prescribed by the department and upon payment of the endorsement fee and submission of satisfactory proof that the endorsee has completed continuing education, training, or testing required by the department.

History: En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975; R.C.M. 1947, 82-1202.1(4)(a); amd. Sec. 10, Ch. 706, L. 1991; amd. Sec. 2, Ch. 396, L. 1993; amd. Sec. 5, Ch. 514, L. 1995; amd. Sec. 43, Ch. 481, L. 1997; amd. Sec. 53, Ch. 492, L. 1997.

Cross-References

State fire prevention and investigation program, 2-15-2005; Title 50, ch. 3.

50-39-103. Inspections, examinations, and hearings authorized. When requested by the department of commerce, the department of justice shall conduct inspections of the applicant's business facilities and shall report to the department of commerce the results of its inspection. The department of commerce may consider the inspection report and conduct examinations or hearings to determine an applicant's qualifications.

History: En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975; R.C.M. 1947, 82-1202.1(part); amd. Sec. 11, Ch. 706, L. 1991; amd. Sec. 3, Ch. 396, L. 1993; amd. Sec. 6, Ch. 514, L. 1995.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-39-104. Repealed. Sec. 46, Ch. 481, L. 1997.

History: En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975; R.C.M. 1947, 82-1202.1(part); amd. Sec. 12, Ch. 706, L. 1991; amd. Sec. 4, Ch. 396, L. 1993; amd. Sec. 7, Ch. 514, L. 1995.

50-39-105. Fees. (1) There is an annual $200 license fee.

(2) There is an annual fee for each endorsement required by 50-39-101, as follows:

(a) $100 to sell, service, or install fire alarm systems;

(b) $100 to sell, service, or install special agent fire suppression systems; and

(c) $100 to sell, service, or install fire extinguishing systems.

(3) The fees may be prorated. In the year of first application, there is an additional fee equal to the cost of processing the application.

History: En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975; R.C.M. 1947, 82-1202.1(4)(c), (4)(d); amd. Secs. 13, 38, Ch. 706, L. 1991; amd. Sec. 5, Ch. 396, L. 1993.

50-39-106. Deposit of fees. The fees collected under 50-39-105 must be deposited in an account in the state special revenue fund to the credit of the department of commerce and appropriated to the department of commerce and the department of justice to administer this part.

History: En. Sec. 7, Ch. 396, L. 1993; amd. Sec. 8, Ch. 514, L. 1995.

Cross-References

State fund structure, 17-2-102.

50-39-107. Rulemaking authority. The department of commerce may adopt rules to implement this part.

History: En. Sec. 6, Ch. 396, L. 1993; amd. Sec. 9, Ch. 514, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-39-108. Definitions. As used in this chapter, the following definitions apply:

(1) "Apprentice" means a person who is working in a training capacity to service or install fire alarm systems, special agent fire suppression systems, or fire extinguishing systems and who is studying in accordance with a program approved by the department of commerce.

(2) "Endorsement" means a document, issued by the department of commerce to an individual who has met qualifications, that authorizes the individual to sell, service, and install fire alarm systems, special agent fire suppression systems, or fire extinguishing systems.

(3) "Entity" means any business, partnership, sole proprietorship, organization, association, corporation, firm, governmental organization, fire agency, or any other business association.

(4) (a) "Fire alarm system" means a combination of approved compatible devices with the necessary electrical interconnection and energy to produce an alarm signaling the event of fire or system activation.

(b) The term does not include single station smoke or heat detectors.

(5) "Fire extinguisher" means a portable device containing an extinguishing agent that can be expelled under pressure for the purpose of suppressing or extinguishing a fire.

(6) "Fire extinguishing system" means a fire sprinkler system designed in accordance with nationally recognized standards that consists of an assembly of piping or conduits that conveys water, foam, or air with or without other agents to dispersal openings or devices to extinguish, control, or contain fire and to provide protection from exposure to fire or the products of combustion. Included are underground and overhead piping, ponds, tanks, pumps, extra or special hazard applications, and other related components or devices necessary for water supplies.

(7) "Inspection" means the periodic examination of premises, equipment, or procedures or of a licensed or endorsed person or entity to determine whether the person's or entity's business or profession is being conducted in a manner consistent with the public health, safety, and welfare. The term includes the inquiry, analysis, audit, or other pursuit of information, with respect to a written complaint or other information before the department of commerce, that is carried out for the purpose of assisting the department of commerce in determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) whether a license should be granted or denied; or

(c) whether the department of commerce should seek an injunction against unlicensed practice.

(8) (a) "Install" means the technical work that may be performed only by an endorsed individual or an apprentice in the assembly of a fire alarm system, special agent fire suppression system, or fire extinguishing system.

(b) The term does not include the delivery of supplies or the offsite cutting or threading of pipe.

(c) The term does include the following tasks:

(i) inspection of jobsites to determine the presence of obstructions and to ascertain that holes will not cause structural weaknesses;

(ii) determination of the course or plan of installation;

(iii) any jobsite bending of pipe or electrical conduit as part of the installation;

(iv) jobsite assembly and installation of metal or nonmetal pipe fittings, including but not limited to those made of brass, copper, lead, glass, and plastic;

(v) jobsite assembly and installation of wiring systems;

(vi) joining of piping by any means, including pipes joined by threaded, caulked, wiped, soldered, brazed, fused, or cemented joints;

(vii) securing of pipe, wire, or electrical conduit to the structure by any means, including but not limited to clamps, brackets, hangers, and welds; and

(viii) testing the installed system for electrical or mechanical malfunctions.

(9) "License" means the document issued by the department of commerce that authorizes a person or entity to engage in the business of servicing fire

extinguishers or to engage in the business of selling, servicing, or installing fire alarm systems, special agent fire suppression systems, or fire extinguishing systems.

(10) "Sell", "sale", and associated words mean offering or contracting to transfer, lease, or rent any merchandise, equipment, or service at retail to the public or any member of the public for an agreed sum of money or other consideration.

(11) (a) "Service", when referring to portable fire extinguishers and fire extinguisher cylinders, means maintenance and includes breakdown for replacement of parts or for agent, repair, recharging, or hydrostatic testing.

(b) When referring to alarm systems, fire extinguishing systems, and fire suppression systems, the term means maintenance and testing required to keep the protective signaling, extinguishing, and suppression system and its component parts in an operative condition at all times, together with replacement of the system or its component parts with listed or approved parts when for any reason they become undependable, defective, or inoperative.

(c) The term does not include resetting manual alarm systems that may be reset by a properly trained building owner or the owner's designated representative.

(12) "Special agent fire suppression system" means an approved system and components that require individual engineering in accordance with manufacturer specifications and includes dry chemical, carbon dioxide, halogenated, gaseous agent, foam, and wet chemical systems. The term includes a preengineered system but does not include a fire extinguishing system.

History: En. Sec. 39, Ch. 481, L. 1997.

Part 2
Standardization
(Repealed. Sec. 37, Ch. 706, L. 1991)

Part Compiler's Comments

Histories of Repealed Sections:

50-39-201. En. Sec. 1, Ch. 53, L. 1929; re-en. Sec. 2762.1, R.C.M. 1935; R.C.M. 1947, 82-1233.

50-39-202. En. Sec. 2, Ch. 53, L. 1929; re-en. Sec. 2762.2, R.C.M. 1935; R.C.M. 1947, 82-1234.

50-39-203. En. Sec. 3, Ch. 53, L. 1929; re-en. 2762.3, R.C.M. 1935; R.C.M. 1947, 82-1235.

CHAPTER 40

SMOKING IN PUBLIC PLACES

Part 1 — Montana Clean Indoor Air Act

50-40-101. Short title.
50-40-102. Purpose.
50-40-103. Definitions.
50-40-104. Designation or reservation of smoking or nonsmoking areas — notice.
50-40-105. No smoking signs in certain places.
50-40-106. Requirements of health care facilities.
50-40-107. Exemptions.
50-40-108. Enforcement.

50-40-109. Penalties.

Part 2 — Government Offices and Work Areas

50-40-201. Reservation of smoking and nonsmoking areas in work areas in local government buildings.
50-40-202. Public policy.
50-40-203. Definitions.
50-40-204. Smoke-free buildings — designated smoking areas.
50-40-205. Signing — smoking receptacles.
50-40-206. Special revenue account — donations for smoking areas .

Part 1
Montana Clean Indoor Air Act

Part Cross-References

Regulation of cigarette marketing, Title 16, ch. 10.

Taxation of tobacco products, Title 16, ch. 11.

Youth Access to Tobacco Production Central Act, Title 16, ch. 11, part 3.

50-40-101. Short title. This part may be cited as the "Montana Clean Indoor Air Act of 1979".

History: En. Sec. 1, Ch. 368, L. 1979.

50-40-102. Purpose. The purpose of this part is to protect the health of nonsmokers in public places and to provide for reserved areas in some public places for those who choose to smoke.

History: En. Sec. 2, Ch. 368, L. 1979.

50-40-103. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Enclosed public place" means an indoor area, room, or vehicle used by the general public or serving as a place of work, including but not limited to restaurants, stores, offices, trains, buses, educational or health care facilities, auditoriums, arenas, and assembly and meeting rooms open to the public.

(3) "Establishment" means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.

(4) "Person" means an individual, partnership, corporation, association, political subdivision, or other entity.

(5) "Place of work" means an enclosed room where more than one employee works.

(6) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product.

(7) "Smoking area" means a designated area in which smoking is permitted.

History: En. Sec. 3, Ch. 368, L. 1979; amd. Sec. 1, Ch. 460, L. 1981; amd. Sec. 133, Ch. 418, L. 1995; amd. Sec. 312, Ch. 546, L. 1995.

50-40-104. Designation or reservation of smoking or nonsmoking areas — notice. (1) The proprietor or manager of an enclosed public place shall:

(a) designate nonsmoking areas with easily readable signs;

(b) reserve a part of the public place for nonsmokers and post easily readable signs designating a smoking area;

(c) designate the entire area as a smoking area by posting a sign that is clearly visible to the public stating this designation; or

(d) designate and reserve the entire area as a nonsmoking area.

(2) The proprietor or manager of an establishment containing enclosed public places shall post a sign in a conspicuous place at all public entrances to the establishment stating, in a manner that can be easily read and understood, whether or not areas within the establishment have been reserved for nonsmokers.

(3) The proprietor or manager of an establishment containing both a restaurant and a tavern, in which some patrons choose to eat their meals in the tavern, is not required by this part to post a sign described in subsection (2) in the tavern area of the establishment.

(4) The proprietor or manager of an intrastate bus that is not chartered shall prohibit smoking in all parts of the bus.

History: En. Sec. 4, Ch. 368, L. 1979; amd. Sec. 2, Ch. 460, L. 1981; amd. Sec. 2, Ch. 505, L. 1985; amd. Sec. 1, Ch. 458, L. 1989; (4)En. Sec. 2, Ch. 281, L. 1991.

50-40-105. No smoking signs in certain places. No smoking signs must be conspicuously posted in intrastate buses that are not chartered, elevators, museums, galleries, kitchens, and libraries of any establishment doing business with the general public.

History: En. Sec. 5, Ch. 368, L. 1979; amd. Sec. 1, Ch. 281, L. 1991.

50-40-106. Requirements of health care facilities. (1) Health care facilities shall:

(a) ask all inpatients, prior to admission, to designate their preference for a nonsmoking or smoking patient room and, when possible, accommodate such a preference;

(b) prohibit smoking in all kitchens, laboratories, and corridors;

(c) prohibit smoking in storage areas for supplies or materials and wherever flammable liquids, gases, or oxygen is stored or in use;

(d) provide a nonsmoking area in all waiting rooms;

(e) prohibit employees from smoking in patient rooms; and

(f) require visitors to obtain express approval from all patients in the patient room, or from the patients' physicians, prior to smoking.

(2) Nothing in this section shall prohibit a health care facility from banning smoking on all or a part of its premises.

(3) All areas of a health care facility not specifically referred to in this section may be considered smoking areas unless posted otherwise.

History: En. Sec. 6, Ch. 368, L. 1979.

Cross-References

Health care facility defined, 50-5-101.

50-40-107. Exemptions. The following shall be exempt from this part:

(1) restrooms;

(2) taverns or bars where meals are not served;

(3) vehicles or rooms seating six or fewer members of the public;

(4) school district buildings and facilities designated as tobacco-free by the board of trustees of the school district;

(5) community college buildings or facilities designated as tobacco-free by the board of trustees of the community college district;

(6) state government buildings declared smoke-free.

History: En. Sec. 7, Ch. 368, L. 1979; amd. Sec. 2, Ch. 466, L. 1989; amd. Sec. 5, Ch. 539, L. 1991.

50-40-108. Enforcement. The provisions of this part shall be supervised and enforced by the local boards of health under the direction of the department.

History: En. Sec. 8, Ch. 368, L. 1979.

Cross-References

Local boards of health, Title 50, ch. 2.

50-40-109. Penalties. A person who fails to designate or reserve a smoking or nonsmoking area in his establishment as provided for in 50-40-104 is guilty of a misdemeanor and is subject to a fine of not more than $25.

History: En. Sec. 3, Ch. 460, L. 1981.

Part 2

Government Offices and Work Areas

Part Cross-References

Tobacco possession or consumption by persons under 18 years of age prohibited — penalties, 45-5-637.

50-40-201. Reservation of smoking and nonsmoking areas in work areas in local government buildings. (1) In offices and work areas in buildings maintained by a political subdivision, except a school or community college facility designated as tobacco-free by the board of trustees of the school district or community college district, the governing body of the political subdivision shall, except as provided in subsection (2), arrange nonsmoking and smoking areas in a convenient area.

(2) The governing body of a political subdivision may designate any building maintained by it as smoke-free.

(3) Restrictions authorized by this section and imposed by the governing body apply uniformly to the employees of the political subdivision and the public.

History: En. Sec. 1, Ch. 505, L. 1985; amd. Sec. 1, Ch. 466, L. 1989; amd. Sec. 6, Ch. 539, L. 1991; amd. Sec. 1, Ch. 274, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 274 in middle of (1) after "college district" substituted "the governing body of the political subdivision shall, except as provided in subsection (2)" for "in which seven or more employees of the political subdivision are employed, the manager or person in charge of the work area shall"; inserted (2) authorizing governing body of political subdivision to designate building maintained by it as smoke-free; inserted (3) providing that authorized restrictions imposed by governing body apply uniformly to employees and public; and made minor changes in style. Amendment effective July 1, 1999.

50-40-202. Public policy. In recognition of the increased health hazards of passive smoke on the nonsmoker, it is the declared public policy of the state of Montana that certain buildings both owned and occupied by the state may be smoke-free. It is further the policy of the state that designated smoking areas be established in certain other state buildings pursuant to 50-40-204.

History: En. Sec. 1, Ch. 539, L. 1991; amd. Sec. 4, Ch. 389, L. 1993.

50-40-203. Definitions. As used in 50-40-202 through 50-40-205, the following definitions apply:

(1) "Agency head" means a director, commissioner, or constitutional officer in charge of an executive, legislative, or judicial branch agency or of an agency of the Montana university system.

(2) "Designated smoking area" means an enclosed, comfortable area that maintains adequate ventilation to minimize the circulation of smoke to surrounding areas and that has been designated as a smoking area under 50-40-204.

(3) "Smoking" means any lighted cigar, cigarette, or pipe or any other lighted tobacco product.

History: En. Sec. 2, Ch. 539, L. 1991; amd. Sec. 3, Ch. 389, L. 1993.

50-40-204. Smoke-free buildings — designated smoking areas. (1) In buildings both owned and occupied by the state, smoking is prohibited in the following areas:

(a) general office space;

(b) auditoriums, classrooms, and conference rooms;

(c) elevators;

(d) corridors, lobbies, restrooms, and stairways;

(e) medical care facilities;

(f) libraries; and

(g) hazardous areas.

(2) (a) Subject to subsection (1), in state-owned buildings, an agency head shall establish at least one designated smoking area in the building occupied by the agency, provided that the building is suited by architectural design and functional purpose to have a designated smoking area as defined in 50-40-203.

(b) Buildings in the Montana university system and buildings housing items of artistic or historic value that may be damaged by smoke are exempt from the provisions of subsection (2)(a).

(3) In establishing designated smoking areas, as provided in subsection (2), an agency head shall consider:

(a) the number of smokers and nonsmokers in the agency;

(b) the building ventilation system;

(c) the availability of space;

(d) the protection of nonsmokers from involuntary exposure to smoke; and

(e) available resources.

(4) (a) Agencies in multitenant buildings are encouraged to work together to identify designated smoking areas.

(b) The legislature shall establish designated smoking areas in the capitol in areas used by the legislature.

History: En. Sec. 3, Ch. 539, L. 1991; amd. Sec. 5, Ch. 389, L. 1993; amd. Sec. 32, Ch. 308, L. 1995.

50-40-205. Signing — smoking receptacles. (1) An agency head shall place signs stating where the designated smoking areas are located.

(2) An agency head is responsible for providing adequate ash trays or receptacles in the designated smoking areas.

(3) In buildings of historical significance, agency signs must be aesthetically pleasing and must fit the architectural style of the building.

History: En. Sec. 4, Ch. 539, L. 1991; amd. Sec. 6, Ch. 389, L. 1993.

50-40-206. Special revenue account — donations for smoking areas. (1) There is an account in the state special revenue fund for the establishment of designated smoking areas pursuant to 50-40-204.

(2) The department of administration is authorized to accept donations to pay for the establishment of or improvements to designated smoking areas in state buildings and shall deposit any donations into the special revenue account established in subsection (1).

(3) The money in the special revenue account must be used by the department of administration to pay for the establishment of or improvements to designated smoking areas pursuant to 50-40-204.

History: En. Sec. 1, Ch. 389, L. 1993; amd. Sec. 45, Ch. 422, L. 1997.

CHAPTER 41

LAETRILE

Part 1 — General Provisions

50-41-101. Laetrile defined.
50-41-102. Laetrile authorized.
50-41-103. Hospital may not interfere.
50-41-104. Health care facility liability.
50-41-105. Physician not subject to disciplinary action.
50-41-106. Laetrile not endorsed — permitted as a dietary supplement.
50-41-107. Laetrile optional.

Part 1

General Provisions

50-41-101. Laetrile defined. As used in this chapter, “laetrile”, also known as B-17, means a cyanogenetic glycoside, which is processed from the seeds of certain fruits, including apricots, peaches, and plums.

History: En. Sec. 1, Ch. 454, L. 1979.

50-41-102. Laetrile authorized. The manufacture, sale, possession, and distribution of laetrile is lawful within this state.

History: En. Sec. 2, Ch. 454, L. 1979.

50-41-103. Hospital may not interfere. A hospital or health care facility may not interfere with the physician-patient relationship by restricting or forbidding the use of laetrile when prescribed or administered by a physician and requested by a patient.

History: En. Sec. 3, Ch. 454, L. 1979.

Cross-References

Health care facility and hospital defined, 50-5-101.

50-41-104. Health care facility liability. No hospital, health care facility, or employee thereof shall be held liable for the administration of laetrile to any person at the direction of a licensed physician.

History: En. Sec. 4, Ch. 454, L. 1979.

Cross-References

Liability, Title 27, ch. 1, part 7.

50-41-105. Physician not subject to disciplinary action. A physician may not be subjected to disciplinary action by the board of medical examiners for prescribing or administering laetrile to a patient under his care as an adjunct to recognized, customary, or accepted modes of therapy in the treatment of any malignancy, disease, illness, or physical condition.

History: En. Sec. 5, Ch. 454, L. 1979.

Cross-References

Board of Medical Examiners, Title 37, ch. 3, part 2.

50-41-106. Laetrile not endorsed — permitted as a dietary supplement. This chapter:

(1) is not an endorsement of laetrile for the treatment of any malignancy, disease, illness, or physical condition;

(2) does not prevent a physician from prescribing laetrile as a dietary supplement to a patient not suffering from any known malignancy, disease, illness, or physical condition.

History: En. Sec. 6, Ch. 454, L. 1979.

50-41-107. Laetrile optional. This chapter does not require:

(1) a physician, pharmacist, pharmacy, manufacturer, or distributor to manufacture, sell, or distribute laetrile;

(2) a physician to prescribe laetrile for any patient.

History: En. Sec. 7, Ch. 454, L. 1979.

Cross-References

Regulation of practice of medicine, Title 37, ch. 3.

Regulation of practice of pharmacy, Title 37, ch. 7.

CHAPTER 42

DIMETHYL SULFOXIDE (DMSO)

Part 1 — General Provisions

50-42-101. DMSO defined.
50-42-102. DMSO authorized.
50-42-103. Hospital not to interfere.
50-42-104. Health care facility nonliability.
50-42-105. Physician not subject to disciplinary action.
50-42-106. DMSO not endorsed.
50-42-107. DMSO optional.

Part 1
General Provisions

Part Cross-References

Drugs and devices, Title 50, ch. 31, part 3.

50-42-101. DMSO defined. As used in this part, "DMSO" means dimethyl sulfoxide.

History: En. Sec. 2, Ch. 333, L. 1981.

50-42-102. DMSO authorized. The manufacture, sale, possession, and distribution of DMSO are lawful within this state. However, distribution or sale of DMSO for human use must be by prescription in accordance with 50-31-307. A person who violates this section is subject to the penalties provided for in 50-31-506.

History: En. Sec. 3, Ch. 333, L. 1981.

50-42-103. Hospital not to interfere. A hospital or health care facility may not interfere with the physician-patient relationship by restricting or forbidding the use of DMSO when requested by a patient and prescribed or administered by a physician.

History: En. Sec. 4, Ch. 333, L. 1981.

Cross-References

Health care facility and hospital defined, 50-5-101.

50-42-104. Health care facility nonliability. No hospital, health care facility, pharmacy, or employee thereof shall be held liable for the administration of DMSO to any person at the direction of a physician licensed in Montana.

History: En. Sec. 5, Ch. 333, L. 1981.

Cross-References

Liability, Title 27, ch. 1, part 7.

50-42-105. Physician not subject to disciplinary action. A physician may not be subjected to disciplinary action by the board of medical examiners for prescribing or administering DMSO to a patient under his care as an adjunct to recognized, customary, or accepted modes of therapy in the treatment of any malignancy, disease, illness, or physical condition.

History: En. Sec. 6, Ch. 333, L. 1981.

Cross-References

Board of Medical Examiners, Title 37, ch. 3, part 2.

50-42-106. DMSO not endorsed. This part is not an endorsement of DMSO for the treatment of any malignancy, disease, illness, or physical condition.

History: En. Sec. 7, Ch. 333, L. 1981.

50-42-107. DMSO optional. This part does not require:

(1) a physician, pharmacist, pharmacy, manufacturer, or distributor to manufacture, sell, or distribute DMSO; or

(2) a physician to prescribe DMSO for any patient.

History: En. Sec. 8, Ch. 333, L. 1981.

Cross-References

Regulation of practice of medicine, Title 37, ch. 3.

Regulation of practice of pharmacy, Title 37, ch. 7.

CHAPTER 43

CALCIUM-EAP, HARNOSAL, AND PHOSETAMIN

Part 1 — General Provisions

50-43-101. Purpose.
50-43-102. Definitions.
50-43-103. Authorization of medication.
50-43-104. Health care facility may not interfere.
50-43-105. Health care facility immunity.
50-43-106. Physician not subject to disciplinary action.
50-43-107. Medication not endorsed — permitted as dietary supplement.
50-43-108. Medication not required.

Part 1

General Provisions

Part Cross-References

Regulation of practice of medicine, Title 37, ch. 3.

Regulation of practice of pharmacy, Title 37, ch. 7.

50-43-101. Purpose. The purpose of this part is to provide for the continuation of medication initiated by a physician for multiple sclerosis. This medication includes the substances described in this part and has been found to be effective in alleviating the symptoms of multiple sclerosis.

History: En. Sec. 1, Ch. 430, L. 1987.

50-43-102. Definitions. In this part, the following definitions apply:

(1) "Calcium-EAP" means a calcium salt of the monoester (2-ethylamine) of phosphoric acid.

(2) "Harnosal" means a compound of sulfamethizole and sulfaethidole. A 500-milligram tablet contains 350 milligrams of sulfamethizole and 150 milligrams of sulfaethidole.

(3) "Phosetamin" means a compound of potassium salt of the monoester (2-ethylamine) of phosphoric acid, magnesium salt of the monoester (2-ethylamine) of phosphoric acid, and calcium salt of the monoester (2-ethylamine) of phosphoric acid. A 350-milligram tablet contains 145.8 milligrams of the potassium salt, 145.8 milligrams of the magnesium salt, and 58.4 milligrams of the calcium salt.

History: En. Sec. 2, Ch. 430, L. 1987.

50-43-103. Authorization of medication. The manufacture, sale, possession, and distribution of calcium-EAP, harnosal, and phosetamin to provide for the continuation of medication initiated by a physician for multiple sclerosis are lawful within this state.

History: En. Sec. 3, Ch. 430, L. 1987.

50-43-104. Health care facility may not interfere. A health care facility may not interfere with the physician-patient relationship by restricting or forbidding the use of calcium-EAP, harnosal, or phosetamin when prescribed or administered by a physician.

History: En. Sec. 4, Ch. 430, L. 1987.

50-43-105. Health care facility immunity. No health care facility or employee thereof may be held liable for the administration of calcium-EAP, harnosal, or phosetamin to any person.

History: En. Sec. 5, Ch. 430, L. 1987.

50-43-106. Physician not subject to disciplinary action. A physician may not be disciplined by the board of medical examiners for prescribing or administering calcium-EAP, harnosal, or phosetamin to a patient under his care in the treatment of any malignancy, disease, illness, or physical condition.

History: En. Sec. 6, Ch. 430, L. 1987.

50-43-107. Medication not endorsed — permitted as dietary supplement. This part:

(1) is not an endorsement of calcium-EAP, harnosal, or phosetamin for the treatment of any malignancy, disease, illness, or physical condition; and

(2) does not prohibit use of calcium-EAP, harnosal, or phosetamin as a dietary supplement.

History: En. Sec. 7, Ch. 430, L. 1987.

50-43-108. Medication not required. This part does not require:

(1) a physician to prescribe calcium-EAP, harnosal, or phosetamin for any patient; or

(2) a physician, pharmacist, pharmacy, manufacturer, or distributor to manufacture, sell, or distribute calcium-EAP, harnosal, or phosetamin.

History: En. Sec. 8, Ch. 430, L. 1987.

CHAPTER 44

TREATMENT OF CHRONIC RENAL DISEASE

Part 1 — Renal Disease Treatment Program

50-44-101. Legislative intent.
50-44-102. Establishment of program.

Part 1

Renal Disease Treatment Program

50-44-101. Legislative intent. It is the intent of the legislature to insure the establishment of a program for the care and treatment of persons suffering from chronic renal diseases who require lifesaving care and treatment for such renal diseases but who are unable to pay for the services on a continuing basis.

History: En. 71-2501 by Sec. 1, Ch. 453, L. 1975; R.C.M. 1947, 71-2501; Sec. 53-6-201, MCA 1989; redes. 50-44-101 by Code Commissioner, 1991.

50-44-102. *(Temporary)* **Establishment of program.** (1) The department of public health and human services shall establish a program to provide treatment to persons suffering from chronic renal diseases, including dialysis and other medical procedures and techniques, that may have a lifesaving effect in the care and treatment of the persons. The department shall extend financial assistance to persons suffering from chronic renal diseases in obtaining the medical, nursing, pharmaceutical, and technical services necessary to care for the diseases, including the rental or purchase of home dialysis equipment and supplies.

(2) The department shall by rule establish standards for determining the amount or duration of financial assistance to be extended to individuals under this program in order that treatment is provided to those who are financially unable to obtain services without causing severe economic imbalance in the family economic unit. The standards must be established without reference to maximum or minimum income levels.

(3) The department is not liable to any person for a failure to provide financial assistance to that person under this section if sufficient funds are not appropriated by the legislature.

50-44-102. *(Effective July 1, 2000)* **Establishment of program.** (1) The department of public health and human services shall establish a program to provide financial assistance to persons suffering from chronic renal diseases in obtaining the medical, nursing, pharmaceutical, and technical services necessary to care for the diseases, including the rental or purchase of home dialysis equipment and supplies.

(2) The department shall by rule establish standards for determining the amount or duration of financial assistance to be extended to individuals under this program. The rules must include standards to ensure that those individuals most in financial or medical need, or both, are the first to receive financial assistance.

(3) The department is not liable to any person for a failure to provide financial assistance to that person under this section if sufficient funds are not appropriated by the legislature.

History: En. 71-2502 by Sec. 2, Ch. 453, L. 1975; R.C.M. 1947, 71-2502; amd. Sec. 2, Ch. 692, L. 1983; Sec. 53-6-202, MCA 1989; redes. 50-44-102 by Code Commissioner, 1991; amd. Sec. 134, Ch. 418, L. 1995; amd. Sec. 313, Ch. 546, L. 1995; amd. Sec. 1, Ch. 92, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 92 in (1) near middle after "provide" deleted "treatment to persons suffering from chronic renal diseases, including dialysis and other medical procedures and techniques, that may have a lifesaving effect in the care and treatment of the persons"; in (2) at end of first sentence after "program" deleted "in order that treatment is provided to those who are financially unable to obtain services without causing severe economic imbalance in the family economic unit. The standards must be established without reference to maximum or minimum income levels" and inserted second sentence requiring rules ensuring that individuals most in financial or medical need be first to receive financial assistance; and made minor changes in style. Amendment effective July 1, 2000.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

CHAPTERS 45 THROUGH 48

RESERVED

CHAPTER 49

FOOD AND NUTRITION

Part 1 — Montana Access to Food and Nutrition Act

50-49-101. Short title.
50-49-102. Purpose.
50-49-103. Definitions.
50-49-104. Repealed.
50-49-105. Repealed.
50-49-106. Gifts and grants.
50-49-107. Public health nutritionist — appointment and duties.
50-49-108. Repealed.

Chapter Cross-References

Nutritionists, Title 37, ch. 25, part 1.

Montana Older Americans Act, Title 52, ch. 3, part 5.

Part 1

Montana Access to Food and Nutrition Act

50-49-101. Short title. This part may be cited as the "Montana Access to Food and Nutrition Act".

History: En. Sec. 2, Ch. 569, L. 1991.

50-49-102. Purpose. It is the policy of the state of Montana that all citizens should have access to food programs and nutrition services to prevent any needy citizen from experiencing hunger and poor nutrition and their impact on physical and mental health.

History: En. Sec. 1, Ch. 569, L. 1991.

50-49-103. Definitions. For purposes of this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Food programs and nutrition services" means public or private programs to provide food and nutrition assistance to persons who have need. The term includes but is not limited to the food stamp program, food programs for the elderly, and supplemental food programs for women, infants, and children.

History: En. Sec. 3, Ch. 569, L. 1991; amd. Sec. 135, Ch. 418, L. 1995; amd. Sec. 314, Ch. 546, L. 1995; amd. Sec. 8, Ch. 171, L. 1997.

50-49-104. Repealed. Sec. 16, Ch. 171, L. 1997.

History: En. Sec. 5, Ch. 569, L. 1991.

50-49-105. Repealed. Sec. 16, Ch. 171, L. 1997.

History: En. Sec. 6, Ch. 569, L. 1991.

50-49-106. Gifts and grants. The department may accept contributions, gifts, and grants to fund its activities.

History: En. Sec. 7, Ch. 569, L. 1991; amd. Sec. 9, Ch. 171, L. 1997.

50-49-107. Public health nutritionist — appointment and duties. The director of the department shall appoint a registered dietitian as a public health nutritionist. The appointment of the public health nutritionist may not be required unless funding for the position is available. The public health nutritionist shall:

(1) establish a program of public education and technical assistance for programs that provide food assistance; and

(2) provide technical assistance to the governor's advisory council on aging; and

(3) provide technical assistance to health care and public health agencies.

History: En. Sec. 8, Ch. 569, L. 1991; amd. Sec. 10, Ch. 171, L. 1997.

50-49-108. Repealed. Sec. 74, Ch. 18, L. 1995.

History: En. Sec. 9, Ch. 569, L. 1991.

CHAPTER 50

FOOD ESTABLISHMENTS

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Part 1

General Provisions

50-50-101. Purpose of regulation. Regulation of establishments defined in 50-50-102 is required to prevent and eliminate conditions and practices which endanger public health.

History: **En. Sec. 1, Ch. 17, L. 1967; R.C.M. 1947, 27-611.**

50-50-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Baked goods" means breads, cakes, candies, cookies, pastries, and pies that are not potentially hazardous foods.

(2) (a) "Commercial establishment" means an establishment operated primarily for profit.

(b) The term does not include a farmer's market.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Establishment" means a food manufacturing establishment, meat market, food service establishment, food warehouse, frozen food plant, commercial food processor, or perishable food dealer.

(5) "Farmer's market" means a farm premises, a roadside stand owned and operated by a farmer, or an organized market authorized by the appropriate municipal or county authority.

(6) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

(7) "Food manufacturing establishment" means a commercial establishment and buildings or structures in connection with it used to manufacture or prepare food for sale or human consumption, but does not include milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants, slaughterhouses, or meat packing plants.

(8) (a) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public with or without charge.

(b) The term does not include establishments, vendors, or vending machines that sell or serve only packaged, nonperishable foods in their unbroken, original containers or a private organization serving food only to its members.

(c) The term does not include an establishment, as defined in 50-51-102, that serves food only to its registered guests.

(9) (a) "Food warehouse" means a commercial establishment and buildings or structures in connection with it used to store food, drugs, or cosmetics for distribution to retail outlets.

(b) The term does not include a wine, beer, or soft drink warehouse that is separate from facilities where brewing occurs.

(10) "Frozen food plant" means a place used to freeze, process, or store food, including facilities used in conjunction with the frozen food plant, and a place where individual compartments are offered to the public on a rental or other basis.

(11) "Meat market" means a commercial establishment and buildings or structures in connection with it used to process, store, or display meat or meat products for sale to the public or for human consumption.

(12) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under 26 U.S.C. 501.

(13) "Perishable food dealer" means a person or commercial establishment that is in the business of purchasing and selling perishable food to the public.

(14) "Person" means a person, partnership, corporation, association, cooperative group, or other entity engaged in operating, owning, or offering services of an establishment.

(15) (a) "Potentially hazardous food" means a food that is natural or synthetic and is in a form capable of supporting:

(i) the rapid and progressive growth of infectious or toxigenic microorganisms; or

(ii) the growth and toxin production of Clostridium botulinum.

(b) The term includes cut melons, garlic and oil mixtures, a food of animal origin that is raw or heat-treated, and a food of plant origin that is heat-treated or consists of raw seed sprouts.

(c) The term does not include:

(i) an air-cooled, hard-boiled egg with intact shell;

(ii) a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 24° C (75° F);

(iii) a food with a water activity (aw) value of 0.85 or less;

(iv) a food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or

(v) a food for which laboratory evidence is accepted by the department as demonstrating that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of Clostridium botulinum cannot occur.

(16) (a) "Preserves" means processed fruit or berry jams, jellies, compotes, fruit butters, marmalades, chutneys, fruit aspics, fruit syrups, or similar products that have a hydrogen ion concentration (pH) of 4.6 or below when measured at 24° C (75° F) and that are aseptically processed, packaged, and sealed.

(b) The term does not include:

(i) tomatoes or food products containing tomatoes; or

(ii) any other food substrate or product preserved by any method other than that described in subsection (16)(a).

(17) "Raw and unprocessed farm products" means fruits, vegetables, and grains sold at a farmer's market in their natural state that are not packaged and labeled and are not:

(a) cooked;
(b) canned;
(c) preserved, except for drying;
(d) combined with other food products; or
(e) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures.

History: En. Sec. 2, Ch. 17, L. 1967; amd. Sec. 1, Ch. 130, L. 1971; amd. Sec. 1, Ch. 349, L. 1974; R.C.M. 1947, 27-612; amd. Sec. 1, Ch. 199, L. 1987; amd. Sec. 1, Ch. 732, L. 1991; amd. Sec. 1, Ch. 315, L. 1995; amd. Sec. 136, Ch. 418, L. 1995; amd. Sec. 315, Ch. 546, L. 1995; amd. Sec. 1, Ch. 412, L. 1997.

50-50-103. Department authorized to adopt rules. (1) To protect public health, the department may adopt rules relating to the operation of establishments defined in 50-50-102, including coverage of food, personnel, food equipment and utensils, sanitary facilities and controls, construction and fixtures, and housekeeping.

(2) (a) The department and local health authorities may not adopt rules prohibiting the sale of baked goods and preserves by nonprofit organizations or by persons at farmer's markets.

(b) The department and local health authorities may not require that foods sold pursuant to this subsection (2) be prepared in certified or commercial kitchens.

History: En. Sec. 10, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-620(part); amd. Sec. 2, Ch. 315, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-50-104. Cooperative agreements authorized. The department may enter into cooperative agreements with other state agencies and political subdivisions of the state to carry out the provisions of this chapter.

History: En. Sec. 10, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-620(part).

Cross-References

Interlocal cooperation, Art. XI, sec. 7, Mont. Const.

Interlocal agreements, Title 7, ch. 11, part 1.

50-50-105. Diseased person not to handle food. A person who has a communicable disease may not work in any establishment or in the handling or processing of food.

History: En. Sec. 9, Ch. 17, L. 1967; R.C.M. 1947, 27-619.

50-50-106. Injunctions. Notwithstanding any other provision of this chapter, the department, local, county, or district health officer or sanitarian may bring an action for an injunction against the continuation of an alleged violation of this chapter.

History: En. 27-615.2 by Sec. 3, Ch. 508, L. 1975; R.C.M. 1947, 27-615.2.

Cross-References
Injunctions, Title 27, ch. 19.
Local boards of health, Title 50, ch. 2.

50-50-107. County attorney to prosecute violations. When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this chapter or a rule effective under this chapter.

History: En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(5).

Cross-References
Duties of County Attorney relating to state matters, 7-4-2716.

50-50-108. Violation of chapter a misdemeanor. A person who violates provisions of this chapter or rules adopted by the department under this chapter is guilty of a misdemeanor. Upon conviction, he shall be:

(1) fined not less than $50 or more than $100 for the first offense;

(2) fined not less than $75 or more than $200 for the second offense;

(3) fined not less than $200 and imprisoned in the county jail for not more than 90 days for the third and subsequent offenses.

History: En. Sec. 15, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-625.

50-50-109. Civil penalties — injunctions not barred. (1) An establishment that violates this chapter or rules adopted by the department pursuant to this chapter is subject to a civil penalty not to exceed $500.

(2) Civil action to impose penalties, as provided under this section, does not bar injunctions to enforce compliance with this chapter or to enforce compliance with a rule adopted by the department pursuant to this chapter.

History: En. Sec. 7, Ch. 732, L. 1991.

Cross-References
Injunctions, Title 27, ch. 19.

50-50-110. Costs and expenses — recovery by department or county. In a civil action initiated by the department or county under this chapter, the court may, by petition of the department or county, order an establishment that is found in violation of this chapter or rules adopted under this chapter to pay the costs of investigations and any other expenses incurred in enforcing the provisions of this chapter in the case of a willful violation. These costs are limited to the direct costs of investigations and other expenses.

History: En. Sec. 8, Ch. 732, L. 1991.

Part 2
Licensing

50-50-201. License required. (1) Except as provided in 50-50-202, a person operating an establishment shall procure an annual license from the department.

(2) A separate license is required for each establishment, but if more than one type of establishment is operated on the same premises and under the same management, only one license is required.

(3) Only one license is required for a person owning and operating one or more vending machines.

(4) A license issued by the department is not valid unless signed in accordance with 50-50-214.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-613(1) thru (3); amd. Sec. 2, Ch. 200, L. 1979; amd. Sec. 2, Ch. 199, L. 1987; amd. Sec. 12, Ch. 366, L. 1997.

Cross-References

Carrying on business without license — penalty, 7-21-2113.

Cities authorized to license soft drink establishments, 7-21-4201.

Local boards of health, Title 50, ch. 2.

50-50-202. Establishments exempt from license requirement — farmer's market records. (1) Establishments owned or operated by the state or a political subdivision of the state are exempt from licensure but must comply with the requirements of this chapter and rules adopted by the department under this chapter.

(2) A license is not required to operate an establishment if it is operated by a nonprofit organization for a period of less than 14 days in 1 calendar year. An establishment exempt from licensure under this subsection must:

(a) be operated in compliance with the remaining provisions of this chapter and rules adopted by the department under this chapter; and

(b) prior to each operation, register with the local health officer or sanitarian on forms provided by the department.

(3) (a) A license is not required of a gardener, farm owner, or farm operator who sells raw and unprocessed farm products at a farmer's market.

(b) A license is not required of a person selling baked goods or preserves at a farmer's market.

(4) (a) A farmer's market that is an organized market authorized by a municipal or county authority shall keep registration records of all individuals and organizations that sell baked goods or preserves at the market.

(b) The registration records must include but are not limited to the name of the seller, the seller's address and telephone number, the products sold by the seller, and the date the products were sold.

(c) The registration records must be made available to the local health officer or the officer's agent.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-613(6); amd. Sec. 3, Ch. 199, L. 1987; amd. Sec. 3, Ch. 315, L. 1995.

Cross-References

Carrying on business without license — penalty, 7-21-2113.

50-50-203. Application for license. An application for a license is made to the department on forms and contains information required by the department or is an application for a license that is in compliance with rules established by the board of review established in 30-16-302.

History: En. Sec. 4, Ch. 17, L. 1967; amd. Sec. 1, Ch. 48, L. 1973; amd. Sec. 1, Ch. 508, L. 1975; R.C.M. 1947, 27-614(1); amd. Sec. 13, Ch. 366, L. 1997.

50-50-204. Right to license. Licenses shall be granted as a matter of right unless grounds for denial or cancellation exist.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-613(7).

Cross-References

Carrying on business without license — penalty, 7-21-2113.

Discrimination in licensing prohibited, 49-3-204.

50-50-205. License fee — late fee — preemption of local authority — exception. (1) For each license issued, the department shall collect a fee of $60. It shall deposit 85% of the fees collected under this section into the local board inspection fund account created in 50-2-108, 7.5% of the fees into the general fund, and 7.5% of the fees into the account provided for in 50-50-216.

(2) In addition to the license fee required under subsection (1), the department shall collect a late fee from any licensee who has failed to submit a license renewal fee prior to the expiration of the licensee's current license and who operates an establishment governed by this part in the next licensing year. The late fee is $25 and must be deposited in the account provided for in 50-50-216.

(3) A county or other local government may not impose an inspection fee or charge in addition to the fee provided for in subsection (1) unless a violation of this chapter or rule persists and is not corrected after two visits to the establishment.

(4) The fees in subsections (1) and (2) may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party. However, the discounting of license fees may not reduce the fees paid into the local board inspection fund account established in 50-2-108.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 1, Ch. 48, L. 1973; amd. Sec. 1, Ch. 508, L. 1975; R.C.M. 1947, 27-614(2); amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 1, Ch. 336, L. 1983; amd. Sec. 1, Ch. 247, L. 1989; amd. Sec. 2, Ch. 732, L. 1991; amd. Sec. 14, Ch. 366, L. 1997.

Cross-References

State fund structure, 17-2-102.

50-50-206. License not transferable. Licenses are not transferable or applicable to any premises other than that for which the license was issued.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-613(5).

50-50-207. Expiration date of license. (1) Except as provided in subsection (2), licenses expire on December 31 following the date of issue unless canceled for cause.

(2) License renewals provided for in 16-11-122, 30-12-203, 50-50-207, 80-7-106, and 82-15-105 expire on the anniversary date established by rule by the board of review established in 30-16-302.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-613(4); amd. Sec. 15, Ch. 366, L. 1997.

50-50-208. Local board to report number of licensees to department. Before June 1 of each year, the local board of health shall submit to the department a list of the establishments in each jurisdiction that are licensed under this chapter.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 1, Ch. 48, L. 1973; amd. Sec. 1, Ch. 508, L. 1975; R.C.M. 1947, 27-614(part).

Cross-References

Local boards of health, Title 50, ch. 2.

50-50-209. Cancellation of license. The department may cancel a license if it finds, after proper investigation, that the licensee has violated this chapter or a rule effective under this chapter and the licensee has failed or refused to remedy or correct the violation.

History: **En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(part).**

50-50-210. Submission of plan of correction as bar to cancellation. Submission to the department of an acceptable plan of correction within 10 days after receipt from the department of written notice of violation and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department shall be a bar to prosecution for violation.

History: **En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(part).**

50-50-211. Notice and hearing required. A license may not be denied or canceled by the department without delivery to the applicant or licensee of a written statement of the grounds for cancellation or denial or the charge involved and an opportunity to answer at a hearing before the department to show cause, if any, why the license should not be denied or canceled. In such case, the licensee must make a written request to the department for a hearing within 10 days after notice of the grounds or charges has been received.

History: **En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(2).**

Cross-References

Contested case defined — applicability of Montana Administrative Procedure Act, 2-4-102.

50-50-212. Cancellation of license for multiple-type establishment. When a multiple-type establishment is licensed by the department, the denial or cancellation of the license may affect the entire establishment or only a portion of it as determined by the department. A multiple-type establishment includes an establishment authorized by 50-50-201(2).

History: **En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(3).**

50-50-213. Return of license for alteration or destruction. On cancellation of a license or the right to operate one or more of the multiple-type establishments under the same license, the license certificate shall be returned to the department for destruction or deletion of types of establishment as the department may direct in its notice of cancellation.

History: **En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(4).**

50-50-214. Notification of and validation by local health officer. (1) A license issued by the department under this chapter is not valid until signed by the local health officer in the county where the establishment is located or until the license is otherwise validated by the local health officer and is in accordance with rules established by the board of review established in 30-16-302.

(2) The local health officer shall, within 15 days after the department has notified the local health officer of its decision to issue a license under this chapter, make a final decision on whether the license will be validated.

(3) Failure of the local health officer to validate the license within 15 days after its receipt is a refusal.

History: En. Sec. 5, Ch. 200, L. 1979; amd. Sec. 16, Ch. 366, L. 1997.

Cross-References

Local boards of health, Title 50, ch. 2.

50-50-215. Refusal by local health officer — appeal to board. (1) The local health officer may only refuse to validate a license issued under this chapter, upon a finding that the requirements of this chapter and any rules implementing it are not satisfied. If the local health officer refuses to validate the license, he shall notify the applicant and the department in writing stating his reasons.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the local board of health within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the local board of health shall be held pursuant to the contested case provisions of the Montana Administrative Procedure Act.

History: En. Sec. 6, Ch. 200, L. 1979.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Local boards of health, Title 50, ch. 2.

50-50-216. Special revenue account. There is an account in the state special revenue fund. Money in the account is allocated to the department to be used to administer the provisions of this chapter and the rules adopted under it.

History: En. Sec. 3, Ch. 732, L. 1991.

Cross-References

State fund structure, 17-2-102.

Part 3
Inspections

Part Cross-References

Municipal power to inspect foodstuffs and regulate soft drink establishments, 7-21-4201, 7-21-4202.

50-50-301. Health officers and sanitarians to make investigations and inspections. State and local health officers, sanitarians-in-training, and registered sanitarians shall make investigations and inspections of establishments and make reports to the department as required under rules adopted by the department.

History: En. Sec. 11, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-621(1); amd. Sec. 4, Ch. 732, L. 1991.

Cross-References

Local boards of health, Title 50, ch. 2.

50-50-302. Health officers and sanitarians to have free access. State and local health officers, sanitarians-in-training, and sanitarians must be provided free access to establishments at all reasonable hours for the purpose of conducting investigations and inspections as required under this chapter.

History: En. Sec. 11, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-621(2); amd. Sec. 5, Ch. 732, L. 1991.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-50-303. Licensee to furnish food samples. Persons licensed under part 2 shall furnish food samples for analysis as required by rules adopted by the department.

History: En. Sec. 11, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-621(3).

50-50-304. Discovery of food capable of causing food-borne illness. If a state or local health officer, sanitarian, or other authorized person finds food that is capable of causing food-borne illness, he shall issue a report in writing recommending that the food be withheld from sale to the public. A duplicate copy of the report, properly authenticated, is admissible in evidence in any action or proceeding where the condition of the food at the time of the inspection is material.

History: En. Sec. 11, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-621(4).

50-50-305. Department to pay local board for inspections and enforcement. (1) Before June 30 of each year, the department shall pay to a local board of health, as established under 50-2-104, 50-2-106, or 50-2-107, an amount from the local board inspection fund account created in 50-2-108 that must be used only for the purpose of inspecting establishments licensed under this chapter and enforcing the provisions of this chapter; provided, however, that:

(a) there is a functioning local board of health; and

(b) the local board of health, local health officers, sanitarians-in-training, and registered sanitarians:

(i) assist in inspections and enforcement of the provisions of this chapter and the rules adopted under it; and

(ii) meet minimum program performance standards as established under rules adopted by the department.

(2) The funds received by the local board of health pursuant to subsection (1) must be deposited with the appropriate local fiscal authority and must be used to supplement, but not supplant, other funds received by the local board of health that in the absence of funding received under subsection (1) would be made available for the same purpose.

(3) Funds in the local board inspection fund account not paid to the local board of health as provided in subsection (1) may be used by the department, within any jurisdiction that does not qualify to receive payments from the local board inspection fund account, to enforce the provisions of this chapter and the rules adopted under it.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 1, Ch. 48, L. 1973; amd. Sec. 1, Ch. 508, L. 1975; R.C.M. 1947, 27-614(part); amd. Sec. 5, Ch. 336, L. 1983; amd. Sec. 6, Ch. 732, L. 1991.

Part 4

Frozen Food Lockers

Part Cross-References

Frozen food plant operator's lien for rent, 71-3-1505.

50-50-401. Tagging or declaration requirements for stored meat. (1) The owner or operator of an establishment, as defined in this chapter, shall not receive the carcass of a game animal, game bird, or any quarter, half, or whole carcass of beef or veal unless:

(a) it is properly stamped or tagged; or

(b) a written declaration is filed by the owner stating how it was obtained, date placed in the locker, and weight and type of meat.

(2) A declaration made under subsection (1)(b) of this section shall be retained for 1 year and shall be open to inspection by employees of the department.

History: En. Sec. 14, Ch. 17, L. 1967; R.C.M. 1947, 27-624(part).

Cross-References

Hunting and trapping licenses, Title 87, ch. 2.

50-50-402. Plant owner not responsible for violation of game laws. A person who owns or operates a frozen food plant which offers individual compartments to the public is not responsible for violation of game laws by persons who rent locker space from him.

History: En. Sec. 14, Ch. 17, L. 1967; R.C.M. 1947, 27-624(part).

Cross-References

Fish and wildlife laws, Title 87.

50-50-403. Liability of frozen food plant operators restricted. The liability for loss of food by the owner or operator of a frozen food plant which offers individual compartments to the public is limited to negligence in operation or negligence of his employees.

History: En. Sec. 12, Ch. 17, L. 1967; R.C.M. 1947, 27-622.

Cross-References

Liability for negligence, 27-1-701, 27-1-702.

Liability of principal for agent's negligence, 28-10-602.

CHAPTER 51

HOTELS, MOTELS, AND ROOMINGHOUSES

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Chapter Cross-References

Public swimming pools, Title 50, ch. 53.

Fire safety in public buildings, Title 50, ch. 61.

Bailments to innkeepers, Title 70, ch. 6, part 5.

Hotelkeepers' liens, Title 71, ch. 3, part 14.

Part 1

General Provisions

50-51-101. Findings and purpose of regulation. (1) It is found that the public welfare requires control and regulation of the operation of establishments providing lodging space accommodations and the control, inspection, and regulation of persons providing accommodations in order to prevent or eliminate unsanitary and unhealthful conditions and practices, which conditions and practices may endanger public health. It is further found that the regulation of establishments providing lodging space accommodations is in the interest of social well-being and the health and safety of the state and all of its people.

(2) The legislature recognizes that there is a wide disparity in the type of establishments, especially in the size, the time of year at which the establishments operate, and the ability of small establishments with few employees and a limited operating season to conform to the same standards to

which larger establishments are required to conform. These factors must be considered, especially in the operation of small or seasonal businesses that are such an important part of Montana's tourism business. For these reasons, the legislature believes that department rules must be tailored to properly and reasonably address differences in the size, location, purpose, and time of year of operation of certain small or seasonal establishments. The legislature believes that rules governing certain small or seasonal establishments must be limited to requirements meant to ensure basic health standards and should not detract from the rustic, out-of-doors experience offered by many guest ranches and outfitter and guide facilities and desired by many tourists.

History: En. Sec. 1, Ch. 18, L. 1967; amd. Sec. 1, Ch. 485, L. 1973; R.C.M. 1947, 34-301; amd. Sec. 2, Ch. 412, L. 1997.

50-51-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Bed and breakfast" means a private, owner- or manager-occupied residence that is used as a private residence but in which:

(a) breakfast is served and is included in the charge for a guest room; and

(b) the number of daily guests served does not exceed 18.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Establishment" means a bed and breakfast, hotel, motel, roominghouse, guest ranch, outfitting and guide facility, boardinghouse, or tourist home.

(4) "Guest ranch" means a facility that:

(a) uses one or more permanent structures, one or more of which have running water, sewage disposal, and a kitchen;

(b) furnishes sleeping accommodations on advance reservations for a minimum stay;

(c) provides hunting, horseback riding, fishing, or a working cattle ranch experience to its guests; and

(d) is a small establishment or a seasonal establishment.

(5) "Hotel" or "motel" includes:

(a) a building or structure kept, used, maintained as, advertised as, or held out to the public to be a hotel, motel, inn, motor court, tourist court, or public lodginghouse;

(b) a place where sleeping accommodations are furnished for a fee to transient guests, with or without meals.

(6) "Outfitting and guide facility" means a facility that:

(a) uses one or more permanent structures, one or more of which have running water, sewage disposal, and a kitchen;

(b) furnishes sleeping accommodations to guests;

(c) offers hunting, fishing, or recreational services in conjunction with the services of an outfitter or guide, as defined in 37-47-101; and

(d) is a small establishment or a seasonal establishment.

(7) "Person" includes an individual, partnership, corporation, association, county, municipality, cooperative group, or other entity engaged in the business of operating, owning, or offering the services of a bed and breakfast, hotel, motel, boardinghouse, tourist home, guest ranch, outfitting and guide facility, or roominghouse.

(8) "Roominghouse" or "boardinghouse" means buildings in which separate sleeping rooms are rented that provide sleeping accommodations for three or more persons on a weekly, semimonthly, monthly, or permanent basis, whether or not meals or central kitchens are provided but without separated cooking facilities or kitchens within each room, and whose occupants do not need professional nursing or personal-care services provided by the facility.

(9) "Seasonal establishment" means a guest ranch or outfitting and guide facility operating for less than 120 days in a calendar year and offering accommodations to between 9 and 40 people on average a day. The average number of people a day is determined by dividing the total number of guests accommodated during the year by the total number of days that the establishment operated as a guest ranch or outfitting and guide facility during the year.

(10) "Small establishment" means a guest ranch or an outfitting and guide facility offering accommodations to between 9 and 24 people on average a day. The average number of people a day is determined by dividing the total number of guests accommodated during the year by the total number of days that the establishment operated as a guest ranch or outfitting and guide facility during the year.

(11) "Tourist home" means a private home or condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis.

(12) "Transient guest" means a guest for only a brief stay, such as the traveling public.

History: En. Sec. 2, Ch. 18, L. 1967; amd. Sec. 2, Ch. 485, L. 1973; amd. Sec. 1, Ch. 325, L. 1977; R.C.M. 1947, 34-302; amd. Sec. 8, Ch. 597, L. 1983; amd. Sec. 1, Ch. 730, L. 1991; amd. Sec. 8, Ch. 366, L. 1995; amd. Sec. 137, Ch. 418, L. 1995; amd. Sec. 316, Ch. 546, L. 1995; amd. Sec. 1, Ch. 350, L. 1997; amd. Sec. 3, Ch. 412, L. 1997; amd. Sec. 1, Ch. 264, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 264 in definition of seasonal establishment at end of first sentence substituted "on average a day" for "at one time" and inserted second sentence concerning determination of average number a day; in definition of small establishment at end of first sentence substituted "on average a day" for "at one time" and inserted second sentence concerning determination of average number a day"; and made minor changes in style. Amendment effective October 1, 1999.

50-51-103. Department authorized to adopt rules. (1) The department may adopt rules governing the operation of bed and breakfasts, hotels, motels, roominghouses, boardinghouses, and tourist homes to protect the public health and safety.

(2) Rules applicable to a hotel, motel, roominghouse, boardinghouse, or tourist home may relate to construction, furnishings, housekeeping, personnel, sanitary facilities and controls, water supply, sewerage and sewage disposal systems, refuse collection and disposal, registration and supervision, and fire and life safety, food service, rules for bed and breakfast establishments, staggered license expiration dates, and reimbursement of local governments for inspections and enforcement.

(3) The department shall adopt rules governing guest ranches and outfitting and guide facilities. The rules must take into consideration the size,

type, location, and seasonal operations of an establishment and may include only rules to:

(a) ensure that the establishment has safe drinking water and an adequate water supply;

(b) ensure an adequate and sanitary sewage system and refuse disposal system;

(c) address food safety concerns, such as adequate storage, refrigeration, and food handling; and

(d) establish staggered license expiration dates by implementing an initial licensing period determined by the department.

(4) Rules adopted to implement subsection (3) must be adopted through negotiated rulemaking pursuant to the Montana Negotiated Rulemaking Act.

(5) The department shall develop guidelines for county sanitarians to ensure the uniform application of rules statewide. The guidelines must be relative to each type of establishment.

(6) Upon receiving an application for licensure, the department shall timely provide the applicant with a copy of the rules appropriate for the applicant's type of establishment.

History: En. Sec. 6, Ch. 18, L. 1967; amd. Sec. 5, Ch. 485, L. 1973; R.C.M. 1947, 34-306(a); amd. Sec. 2, Ch. 350, L. 1997; amd. Sec. 4, Ch. 412, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Montana Negotiated Rulemaking Act, Title 2, ch. 5.

50-51-104. Cooperative agreements authorized. The department is hereby authorized to enter into cooperative agreements with any of the state agencies or political subdivisions for the purpose of carrying out the provisions of this chapter or any part thereof.

History: En. Sec. 6, Ch. 18, L. 1967; amd. Sec. 5, Ch. 485, L. 1973; R.C.M. 1947, 34-306(b).

Cross-References

Interlocal cooperation, Art. XI, sec. 7, Mont. Const.

Interlocal agreements, Title 7, ch. 11, part 1.

50-51-105. County attorney to prosecute violations. When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this chapter or a rule effective under this chapter.

History: En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975; R.C.M. 1947, 34-305(5).

Cross-References

Duties of County Attorney relating to state matters, 7-4-2716.

50-51-106. Violation of chapter a misdemeanor. Any person violating any provision of this chapter or regulation made hereunder, except 50-51-107, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 or more than $100 for the first offense and not less than $75 or more than $200 for the second offense and for the third and subsequent offenses not less than $200 and by imprisonment in the county jail not to exceed 90 days.

History: En. Sec. 9, Ch. 18, L. 1967; R.C.M. 1947, 34-309; amd. Sec. 18, Ch. 37, L. 1979.

50-51-107. Provision of nursing services or personal-care services by the facility prohibited. (1) Hotels, motels, boardinghouses, roominghouses, or similar accommodations may not provide professional nursing services or personal-care services. A resident of a hotel, motel, boardinghouse, roominghouse, or similar accommodation may have personal-care, medical, or nursing-related services provided for him in such facility by a third-party provider.

(2) Whenever a complaint is filed with the department that a person in need of professional nursing services is residing in a roominghouse or other similar accommodation not licensed to provide such service, the department shall investigate and may require appropriate care or placement of such person if it is found that professional nursing services are needed.

History: En. 34-311, 34-312 by Secs. 2, 3, Ch. 325, L. 1977; R.C.M. 1947, 34-311, 34-312; amd. Sec. 9, Ch. 597, L. 1983.

Cross-References

Medical services and boarding homes for the aged, Title 7, ch. 34.

Health care services, Title 53, ch. 6.

50-51-108. Rules for bed and breakfast establishments. The department, in adopting rules establishing rules for bed and breakfast establishments, shall consult with bed and breakfast operators. The department shall establish a negotiated rulemaking committee, as provided in Title 2, chapter 5, part 1, to consider matters proposed by the department that affect bed and breakfast establishments.

History: En. Sec. 6, Ch. 350, L. 1997.

50-51-109 reserved.

50-51-110. Special revenue account. There is an account in the state special revenue fund. Money in the account is allocated to the department to be used to administer the provisions of this chapter and the rules adopted under it.

History: En. Sec. 4, Ch. 730, L. 1991.

Cross-References

State fund structure, 17-2-102.

Part 2

Licensing

50-51-201. License required. (1) Except as provided in subsection (2), a person engaged in the business of conducting or operating an establishment shall annually procure a license issued by the department.

(2) A guest ranch or an outfitting and guide facility that does not meet the definitions in 50-51-102 and that provides accommodations to fewer than nine people during each day of operation is not required to obtain a license under subsection (1).

(3) Guest ranches and outfitting and guide facilities need not apply for a license pursuant to this chapter for the first time until the later of:

(a) the completion of negotiated rulemaking and public notification by the department of the necessity for those guest ranches or outfitting and guide facilities to obtain a license pursuant to this chapter; or

(b) July 1, 1998.

(4) A separate license is required for each establishment. However, when more than one type of establishment is operated on the same premises and under the same management, only one license is required that must enumerate on the certificate the types of establishments licensed.

(5) Before a license may be issued by the department, it must be validated by the local health officer or, if there is no local health officer, the sanitarian, in the county where the establishment is located.

History: En. Sec. 3, Ch. 18, L. 1967; amd. Sec. 3, Ch. 485, L. 1973; R.C.M. 1947, 34-303(part); amd. Sec. 3, Ch. 200, L. 1979; amd. Sec. 2, Ch. 730, L. 1991; amd. Sec. 9, Ch. 366, L. 1995; amd. Sec. 3, Ch. 350, L. 1997; amd. Sec. 5, Ch. 412, L. 1997.

Cross-References

Discrimination in licensing prohibited, 49-3-204.

One-step facility licensing, Title 50, ch. 8.

50-51-202. Application for license. Application for a license shall be made in writing to the department on such forms and with such pertinent information as it considers necessary.

History: En. Sec. 3, Ch. 18, L. 1967; amd. Sec. 3, Ch. 485, L. 1973; R.C.M. 1947, 34-303(part); amd. Sec. 19, Ch. 37, L. 1979.

50-51-203. Right to renewal. (1) Existing licenses shall be renewed as a matter of right, unless conditions exist which are grounds for a cancellation or denial of a license.

(2) Renewal may be obtained annually by paying the required annual license fee.

History: (1)En. Sec. 3, Ch. 18, L. 1967; amd. Sec. 3, Ch. 485, L. 1973; Sec. 34-303, R.C.M. 1947; (2)En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975; Sec. 34-304, R.C.M. 1947; R.C.M. 1947, 34-303(part), 34-304(part).

50-51-204. License fee — late fee. (1) There shall be paid to the department with each application for such license or for renewal of such license an annual license fee of $40. The department shall deposit 85% of the fees collected under this section into the local board inspection fund account created in 50-2-108, 11.25% of the fees into the general fund, and 3.75% of the fees into the account provided for in 50-51-110.

(2) In addition to the license fee required under subsection (1), the department shall collect a late fee from any licensee who has failed to submit a license renewal fee prior to the expiration of his current license and who operates an establishment governed by this part in the next licensing year. The late fee is $25 and must be deposited in the account provided for in 50-51-110.

History: En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975; R.C.M. 1947, 34-304(a); amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 2, Ch. 336, L. 1983; amd. Sec. 2, Ch. 247, L. 1989; amd. Sec. 3, Ch. 730, L. 1991.

Cross-References

State fund structure, 17-2-102.

50-51-205. License fee to supersede other fees. Payment of the license fee stipulated herein shall be accepted in lieu of any and all existing state fees and charges for like purposes or intent which may be existent prior to the adoption of this chapter.

History: **En. Sec. 10, Ch. 18, L. 1967; R.C.M. 1947, 34-310.**

50-51-206. License not transferable. Such license shall not be transferable or be applicable to any premises other than that for which originally issued.

History: **En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975; R.C.M. 1947, 34-304(part).**

50-51-207. Expiration date of license. (1) Except as provided in subsection (2), each license expires on December 31 following its date of issue unless canceled for cause.

(2) The department may amend or issue licenses to provide for staggered expiration dates. The department may provide for initial license terms of greater than 12 months but no more than 23 months in adopting staggered expiration dates. Thereafter, licenses expire annually. License fees for the license term implementing staggered license terms may be prorated by the department.

History: **En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975; R.C.M. 1947, 34-304(part); amd. Sec. 4, Ch. 350, L. 1997; amd. Sec. 6, Ch. 412, L. 1997.**

50-51-208. Local board to report number of licensees to department. Before June 1 of each year, the local board of health shall submit to the department a list of the establishments in each jurisdiction that are licensed pursuant to this part.

History: **En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975; R.C.M. 1947, 34-304(part).**

Cross-References

Local boards of health, Title 50, ch. 2.

50-51-209. Cancellation of license. The department may cancel a license if it finds, after proper investigation, that the licensee has violated this chapter or a rule effective under this chapter and the licensee has failed or refused to remedy or correct the violation.

History: **En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975; R.C.M. 1947, 34-305(part).**

50-51-210. Submission of plan of correction as bar to cancellation. Submission to the department of an acceptable plan of correction within 10 days after receipt from the department of written notice of violation and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department shall be a bar to prosecution for violation.

History: **En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975; R.C.M. 1947, 34-305(part).**

50-51-211. Notice and hearing required. A license may not be denied or canceled by the department without delivery to the applicant or licensee of a written statement of the grounds therefor or the charge involved and an opportunity to answer at a hearing before the department to show cause, if any, why the license should not be denied or canceled. In such case, the licensee must make a written request to the department for a hearing within 10 days after notice of the grounds or charges has been received.

History: **En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975; R.C.M. 1947, 34-305(2); amd. Sec. 3, Ch. 239, L. 1983.**

Cross-References

Contested case defined — applicability of Montana Administrative Procedure Act, 2-4-102.

50-51-212. Cancellation of license for multiple-type establishment — definition. (1) When a multiple-type establishment is licensed by the department, the denial or cancellation of the license may affect the entire establishment or only a portion of it as determined by the department.

(2) For the purposes of this section, "multiple-type establishment" includes two or more of the following: bed and breakfast, hotel, motel, or tourist home.

History: **En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975; R.C.M. 1947, 34-305(3); amd. Sec. 5, Ch. 350, L. 1997.**

50-51-213. Return of license for alteration or destruction. On cancellation of a license or the right to operate one or more of the multiple-type establishments under the same license, the license certificate shall be returned to the department for destruction or deletion of types of establishment as the department may direct in its notice of cancellation.

History: **En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975; R.C.M. 1947, 34-305(4).**

50-51-214. Notification of and validation by local health officer. (1) A license issued by the department under this chapter is not valid until signed by the local health officer in the county where the establishment is located.

(2) The local health officer shall, within 15 days after the department has notified the local health officer of its decision to issue a license under this chapter, make a final decision on whether the license will be validated.

(3) Failure of the local health officer to validate the license within 15 days after its receipt is a refusal.

History: **En. Sec. 5, Ch. 200, L. 1979.**

Cross-References

Local health officer defined, 50-2-101.

50-51-215. Refusal by local health officer — appeal to board. (1) The local health officer may only refuse to validate a license issued under this chapter, upon a finding that the requirements of this chapter and any rules implementing it are not satisfied. If the local health officer refuses to validate the license, he shall notify the applicant and the department in writing stating his reasons.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the local board of health within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the local board of health shall be held pursuant to the contested case provisions of the Montana Administrative Procedure Act.

History: **En. Sec. 6, Ch. 200, L. 1979.**

Cross-References
Contested cases — Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

Part 3
Inspections

50-51-301. Health officers to make investigations and inspections. State and local health officers, sanitarians-in-training, and registered sanitarians shall make investigations and inspections of establishments and make reports to the department as required under rules adopted by the department.

History: En. Sec. 7, Ch. 18, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 34-307(a); amd. Sec. 5, Ch. 730, L. 1991.

Cross-References
Licensing of sanitarians, Title 37, ch. 40.
Local boards of health, Title 50, ch. 2.
One-step facility licensing, Title 50, ch. 8.

50-51-302. Health officers to have free access. State and local health officers, sanitarians-in-training, and registered sanitarians must be provided free access to establishments at all reasonable hours for the purpose of conducting investigations and inspections as required under this chapter.

History: En. Sec. 7, Ch. 18, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 34-307(b); amd. Sec. 6, Ch. 730, L. 1991.

Cross-References
Right of privacy, Art. II, sec. 10, Mont. Const.
Searches and seizures, Art. II, sec. 11, Mont. Const.

50-51-303. Department to pay local board for inspections and enforcement. (1) Before June 30 of each year, the department shall pay to a local board of health, as established under 50-2-104, 50-2-106, or 50-2-107, an amount from the local board inspection fund account created in 50-2-108 that must be used only for the purpose of inspecting establishments licensed under this chapter and enforcing the provisions of this chapter; provided, however, that:

(a) there is a functioning local board of health; and

(b) the local board of health, local health officers, sanitarians-in-training, and registered sanitarians:

(i) assist in inspections and enforcement of the provisions of this chapter and the rules adopted under it; and

(ii) meet minimum program performance standards as established under rules adopted by the department.

(2) The funds received by the local board of health pursuant to subsection (1) must be deposited with the appropriate local fiscal authority and must be used to supplement, but not supplant, other funds received by the local board of health that in the absence of funding received under subsection (1) would be available for the same purpose.

(3) Funds in the local board inspection fund account not paid to the local board of health as provided in subsection (1) may be used by the department, within any jurisdiction that does not qualify to receive payments from the local

board inspection fund account, to enforce the provisions of this chapter and the rules adopted under it.

History: En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975; R.C.M. 1947, 34-304(part); amd. Sec. 6, Ch. 336, L. 1983; amd. Sec. 7, Ch. 730, L. 1991.

Cross-References

Local boards of health, Title 50, ch. 2.

Part 4
Penalties

50-51-401. Civil penalties — injunctions not barred. (1) An establishment that violates this chapter or rules adopted by the department pursuant to this chapter is subject to a civil penalty not to exceed $500.

(2) Penalties may not be assessed against a guest ranch or outfitter and guide facility unless the guest ranch or outfitting and guide facility receives a written notice of a violation and fails to correct the violation within 30 days.

(3) Civil action to impose penalties, as provided under this section, does not bar injunctions to enforce compliance with this chapter or to enforce compliance with a rule adopted by the department pursuant to this chapter.

History: En. Sec. 8, Ch. 730, L. 1991; amd. Sec. 7, Ch. 412, L. 1997.

Cross-References

Injunctions, Title 27, ch. 19.

50-51-402. Injunctions. The department or a local board of health may petition the district court to enjoin any action in violation of this chapter or of a rule adopted by the department pursuant to this chapter.

History: En. Sec. 9, Ch. 730, L. 1991.

Cross-References

Injunctions, Title 27, ch. 19.

50-51-403. Costs and expenses — recovery by department or county. In a civil action initiated by the department or a county under this chapter, the court may, by petition of the department or county, order an establishment that is found in violation of this chapter or rules adopted under this chapter to pay the costs of investigations and any other expenses incurred in enforcing the provisions of this chapter.

History: En. Sec. 10, Ch. 730, L. 1991.

Cross-References

Costs, Title 25, ch. 10.

CHAPTER 52
TOURIST CAMPGROUNDS AND TRAILER COURTS

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Part 1
General Provisions

50-52-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Campground" means a parcel of land available to and principally used by the public for camping, where persons can camp, secure tents or cabins, or park trailers for camping and sleeping purposes.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Establishment" means a campground, trailer court, work camp, or youth camp.

(4) "Parcel of land" means a unit of land all parts of which are contiguous, including contiguous lots, in the possession of, owned by, or managed by the same person.

(5) "Person" includes an individual, partnership, corporation, association, or other entity engaged in the business of operating, owning, or offering the services of a campground, trailer court, work camp, or youth camp.

(6) "Political subdivision" means any county, city, town, or other legally constituted unit of local government in this state.

(7) (a) "Trailer court" means a parcel of land upon which two or more spaces are available to the public and designated for occupancy by trailers or mobile homes for use as residences.

(b) The term does not include a parcel composed of platted lots, each lot of which:

(i) is filed with the county clerk and recorder;

(ii) contains only one trailer space; and

(iii) is served by a public water supply system and public sewage system that meet the requirements of rules for systems adopted pursuant to Title 75, chapter 6, part 1, and that are located within the boundaries of an incorporated city or town.

(8) "Work camp" means a parcel of land on which housing is provided by a person for two or more families or individuals living separately, for the exclusive use of the employees of the person and the families, if any, of the employees. For purposes of this subsection, "housing" includes but is not limited to camping spaces; trailer parking spaces; mobile, modular, or permanent barracks or structures; and any appurtenant water supply and distribution system, sewage collection and disposal system, solid waste collection and disposal system, or food service and dining facilities. Housing does not include shelter provided by an employer for persons who are employed to perform agricultural duties on a ranch or farm.

(9) (a) "Youth camp" means a parcel of land on which permanent buildings, tents, or other structures are maintained as living quarters for 10 or more people and that is used primarily for educational or recreational use by minors. The term includes any appurtenant water supply and distribution system, sewage collection and disposal system, solid waste collection and disposal system, or food service and dining facilities.

(b) The term does not include any site used solely by the members and their families of a private organization that owns the site.

History: En. Sec. 212, Ch. 197, L. 1967; amd. Sec. 1, Ch. 383, L. 1973; R.C.M. 1947, 69-5601; amd. Sec. 1, Ch. 341, L. 1983; amd. Sec. 138, Ch. 418, L. 1995; amd. Sec. 317, Ch. 546, L. 1995.

50-52-102. Department to adopt rules. The department may adopt rules for constructing and operating campgrounds, trailer courts, work camps, and youth camps to protect the public health and safety. The rules may include rules to:

(1) ensure that establishments have safe and sanitary facilities and systems, including drinking water, sewage disposal, and solid waste disposal systems;

(2) regulate service buildings or facilities associated with any activity regulated by this chapter, including laundry and food service facilities;

(3) provide for review and approval of plans and specifications for establishments;

(4) address nuisances that could cause the spread of disease or illness;

(5) implement staggered license expiration dates;

(6) address licensing of establishments under this chapter and operator requirements; and

(7) provide for reimbursing local governments for inspections and enforcement of this chapter.

History: En. Sec. 213, Ch. 197, L. 1967; amd. Sec. 2, Ch. 383, L. 1973; amd. Sec. 13, Ch. 140, L. 1977; R.C.M. 1947, 69-5602; amd. Sec. 2, Ch. 341, L. 1983; amd. Sec. 7, Ch. 350, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Nuisances, Title 27, ch. 30.

Public water supplies, Title 75, ch. 6.

50-52-103. Duty to obtain license and permit inspections. A person operating an establishment shall:

(1) possess a current license to do so from the department. However, a campground owned by the state or a political subdivision need not obtain a license but must comply with rules applicable to it adopted by the department.

(2) permit inspections by state or local health officers, sanitarians, or other authorized persons at all reasonable times.

History: En. Sec. 214, Ch. 197, L. 1967; amd. Sec. 3, Ch. 383, L. 1973; amd. Sec. 14, Ch. 140, L. 1977; R.C.M. 1947, 69-5603; amd. Sec. 3, Ch. 341, L. 1983.

Cross-References

Discrimination in licensing prohibited, 49-3-204.

One-step facility licensing, Title 50, ch. 8.

50-52-104. County attorney to prosecute violations. When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this chapter or a rule effective under this chapter.

History: En. Sec. 217, Ch. 197, L. 1967; amd. Sec. 81, Ch. 349, L. 1974; amd. Sec. 2, Ch. 506, L. 1975; R.C.M. 1947, 69-5606(3).

Cross-References

Duties of County Attorney relating to state matters, 7-4-2716.

50-52-105. Violation of chapter a misdemeanor. (1) A person violating a provision of this chapter or a rule made under it shall be guilty of a misdemeanor and upon conviction shall be fined not less than $50 or more than $100 for the first offense and not less than $75 or more than $200 for the second offense, and for the third and subsequent offenses, he shall be punished by a fine of not less than $200 and imprisonment in the county jail not to exceed 90 days.

(2) Fines, except justice's court fines, shall be paid to the county treasurer of the county in which the establishment is located. The county treasurer shall send all fines collected to the state treasurer for deposit in the state general fund.

History: En. Sec. 218, Ch. 197, L. 1967; amd. Sec. 6, Ch. 383, L. 1973; amd. Sec. 3, Ch. 506, L. 1975; amd. Sec. 15, Ch. 140, L. 1977; R.C.M. 1947, 69-5607; amd. Sec. 4, Ch. 341, L. 1983; amd. Sec. 35, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

50-52-106. Injunction. The department or a local board of health may petition the district court to enjoin any action in violation of this chapter or of a rule adopted by the department pursuant to this chapter.

History: En. Sec. 5, Ch. 341, L. 1983.

Cross-References

Injunctions, Title 27, ch. 19.

Local boards of health, Title 50, ch. 2.

50-52-107. Civil penalties — injunctions not barred. (1) An establishment that violates this chapter or rules adopted by the department pursuant to this chapter is subject to a civil penalty not to exceed $500.

(2) Civil action to impose penalties, as provided under this section, does not bar injunctions to enforce compliance with this chapter or to enforce compliance with a rule adopted by the department pursuant to this chapter.

History: En. Sec. 5, Ch. 731, L. 1991.

Cross-References
Injunctions, Title 27, ch. 19.
Local boards of health, Title 50, ch. 2.

50-52-108. Costs and expenses — recovery by department or county. In a civil action initiated by the department or county under this chapter, the court may, by petition of the department or county, order an establishment that is found in violation of this chapter or rules adopted under this chapter to pay the costs of investigations and any other expenses incurred in enforcing the provisions of this chapter.

History: En. Sec. 6, Ch. 731, L. 1991.

Cross-References
Costs, Title 25, ch. 10.

Part 2
Licensing

50-52-201. Application for license. (1) Application for a license is made to the department on forms containing information required by the department.

(2) The department may not issue a license unless it has been validated by the local health officer, or if there is no local health officer the sanitarian, in the county where the establishment is located.

History: En. Sec. 215, Ch. 197, L. 1967; amd. Sec. 4, Ch. 383, L. 1973; amd. Sec. 1, Ch. 506, L. 1975; R.C.M. 1947, 69-5604(part); amd. Sec. 4, Ch. 200, L. 1979.

Cross-References
Licensing of sanitarians, Title 37, ch. 40.
Local health officer defined, 50-2-101.

50-52-202. License fee — late fee. (1) Each application shall be accompanied by a fee of $40.

(2) The department shall deposit 85% of the fees collected under subsection (1) into the local board inspection fund account created in 50-2-108, 11.25% of the fees into the general fund, and 3.75% of the fees collected under subsection (1) into the account provided for in 50-52-210.

(3) In addition to the license fee required under subsection (1), the department shall collect a late fee from any licensee who has failed to submit a license renewal fee prior to the expiration of his current license and who operates an establishment governed by this part in the next licensing year. The late fee is $25 and must be deposited in the account provided for in 50-52-210.

History: En. Sec. 215, Ch. 197, L. 1967; amd. Sec. 4, Ch. 383, L. 1973; amd. Sec. 1, Ch. 506, L. 1975; R.C.M. 1947, 69-5604(part); amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 3, Ch. 336, L. 1983; amd. Sec. 3, Ch. 247, L. 1989; amd. Sec. 1, Ch. 731, L. 1991.

50-52-203. Expiration date of license. (1) Except as provided in subsection (2), licenses expire on December 31 of the year in which they are issued unless canceled for cause.

(2) The department may amend or issue licenses to provide for staggered expiration dates. The department may provide for initial license terms of greater than 12 months but no more than 23 months in adopting staggered expiration dates. Thereafter, licenses expire annually. License fees for the license term implementing staggered license terms will be prorated by the department.

History: **En. Sec. 215, Ch. 197, L. 1967; amd. Sec. 4, Ch. 383, L. 1973; amd. Sec. 1, Ch. 506, L. 1975; R.C.M. 1947, 69-5604(part); amd. Sec. 8, Ch. 350, L. 1997.**

50-52-204. Local board to report number of licensees to department. Before June 1 of each year, the local board of health shall submit to the department a list of the establishments in each jurisdiction which are licensed under this part.

History: **En. Sec. 215, Ch. 197, L. 1967; amd. Sec. 4, Ch. 383, L. 1973; amd. Sec. 1, Ch. 506, L. 1975; R.C.M. 1947, 69-5604(part).**

Cross-References

Local boards of health, Title 50, ch. 2.

50-52-205. Cancellation of license. The department may cancel a license if it finds, after proper investigation, that the licensee has violated this chapter or a rule effective under this chapter and the licensee has failed or refused to remedy or correct the violation.

History: **En. Sec. 217, Ch. 197, L. 1967; amd. Sec. 81, Ch. 349, L. 1974; amd. Sec. 2, Ch. 506, L. 1975; R.C.M. 1947, 69-5606(part).**

50-52-206. Submission of plan of correction as bar to cancellation. Submission to the department of an acceptable plan of correction within 10 days after receipt from the department of written notice of violation and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department shall be a bar to prosecution for violation.

History: **En. Sec. 217, Ch. 197, L. 1967; amd. Sec. 81, Ch. 349, L. 1974; amd. Sec. 2, Ch. 506, L. 1975; R.C.M. 1947, 69-5606(part).**

50-52-207. Notice and hearing required. A license may not be denied or canceled by the department without delivery to the applicant or licensee of a written statement of the grounds for denial or cancellation or the charge involved and an opportunity to answer at a hearing before the department to show cause, if any, why the license should not be denied or canceled. In this case, the licensee must make a written request to the department for a hearing within 10 days after notice of the grounds or charges has been received.

History: **En. Sec. 217, Ch. 197, L. 1967; amd. Sec. 81, Ch. 349, L. 1974; amd. Sec. 2, Ch. 506, L. 1975; R.C.M. 1947, 69-5606(2).**

Cross-References

Contested case defined — applicability of Montana Administrative Procedure Act, 2-4-102.

50-52-208. Notification of and validation by local health officer. (1) A license issued by the department under this chapter is not valid until signed by the local health officer in the county where the establishment is located.

(2) The local health officer shall, within 15 days after the department has notified the local health officer of its decision to issue a license under this chapter, make a final decision on whether the license will be validated.

(3) Failure of the local health officer to validate the license within 15 days after its receipt is a refusal.

History: **En. Sec. 5, Ch. 200, L. 1979.**

Cross-References

Local health officer defined, 50-2-101.

50-52-209. Refusal by local health officer — appeal to board. (1) The local health officer may only refuse to validate a license issued under this chapter, upon a finding that the requirements of this chapter and any rules implementing it are not satisfied. If the local health officer refuses to validate the license, he shall notify the applicant and the department in writing stating his reasons.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the local board of health within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the local board of health shall be held pursuant to the contested case provisions of the Montana Administrative Procedure Act.

History: En. Sec. 6, Ch. 200, L. 1979.

Cross-References

Contested cases — Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

Local health officer defined, 50-2-101.

50-52-210. Special revenue account. There is an account in the state special revenue fund. Money in the account is allocated to the department to be used to administer the provisions of this chapter and the rules adopted under it.

History: En. Sec. 2, Ch. 731, L. 1991.

Cross-References

State fund structure, 17-2-102.

50-52-211. Right to renewal. (1) The department shall renew licenses as a matter of right, unless conditions exist that are grounds for cancellation or denial of a license.

(2) Renewal may be obtained annually by paying the required annual license fee.

History: En. Sec. 9, Ch. 350, L. 1997.

Part 3
Inspections

Part Cross-References

Sanitation in subdivisions, Title 76, ch. 4, part 1.

50-52-301. Health officers and sanitarians to make investigations and inspections. State and local health officers, sanitarians-in-training, and registered sanitarians shall make investigations and inspections of establishments and make reports to the department as required under rules adopted by the department.

History: En. Sec. 216, Ch. 197, L. 1967; amd. Sec. 5, Ch. 383, L. 1973; R.C.M. 1947, 69-5605; amd. Sec. 6, Ch. 341, L. 1983; amd. Sec. 3, Ch. 731, L. 1991.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

Licensing of sanitarians, Title 37, ch. 40.

Sanitarian-in-training defined, 37-40-101.

Local health officer defined, 50-2-101.

50-52-302. Department to pay local board for inspection and enforcement. (1) Before June 30 of each year, the department shall pay to a local board of health, as established under 50-2-104, 50-2-106, or 50-2-107, an amount from the local board inspection fund account created in 50-2-108 that must be used only for the purpose of inspecting establishments licensed under this chapter and enforcing the provisions of this chapter; provided, however, that:

(a) there is a functioning local board of health; and

(b) the local board of health, local health officers, sanitarians-in-training, and registered sanitarians:

(i) assist in inspections and enforcement of the provisions of this chapter and the rules adopted under it; and

(ii) meet minimum program performance standards as established under rules adopted by the department.

(2) The funds received by the local board of health pursuant to subsection (1) must be deposited with the appropriate local fiscal authority and must be used to supplement, but not supplant, other funds received by the local board of health that in the absence of funding received under subsection (1) would be made available for the same purpose.

(3) Funds in the local board inspection fund account not paid to the local board of health as provided in subsection (1) may be used by the department, within any jurisdiction that does not qualify to receive payments from the local board inspection fund, to enforce the provisions of this chapter and the rules adopted under it.

History: En. Sec. 215, Ch. 197, L. 1967; amd. Sec. 4, Ch. 383, L. 1973; amd. Sec. 1, Ch. 506, L. 1975; R.C.M. 1947, 69-5604(part); amd. Sec. 7, Ch. 336, L. 1983; amd. Sec. 4, Ch. 731, L. 1991.

50-52-303. Health officers and sanitarians to have access to establishments. State and local health officers, sanitarians-in-training, and registered sanitarians must be provided free access to establishments at all reasonable hours for the purpose of conducting investigations and inspections as required under this chapter.

History: En. Sec. 7, Ch. 731, L. 1991.

CHAPTER 53

PUBLIC SWIMMING POOLS AND SWIMMING AREAS

Part 1 — General Provisions

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50-53-201. License required — exemption — validation.
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50-53-211. Denial, suspension, or cancellation of license — multiple pool facility.
50-53-212. Administrative enforcement — notice — department hearing.
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50-53-217. Recovery of costs by department or local jurisdiction.
50-53-218. Department to pay board for inspections or enforcement, or both.

Part 1

General Provisions

Part Cross-References

Plans to bear professional seal, 18-2-122.

50-53-101. Purpose of regulation. It is the public policy of this state to regulate public swimming pools and public bathing places to protect public health and safety.

History: En. Sec. 201, Ch. 197, L. 1967; R.C.M. 1947, 69-5501; amd. Sec. 1, Ch. 646, L. 1985.

50-53-102. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Local board of health" or "board" means a local board as defined in 50-2-101.

(3) "Local health officer" or "officer" means a local health officer as defined in 50-2-101.

(4) "Person" means a person, firm, partnership, corporation, organization, the state, or any political subdivision of the state.

(5) "Public bathing place" means a body of water with bathhouses and related appurtenances operated for the public.

(6) "Public swimming pool" means an artificial pool and bathhouses and related appurtenances for swimming, bathing, or wading, including natural hot water pools. The term does not include:

(a) swimming pools located on private property used for swimming or bathing only by the owner, members of the owner's family, or their invited guests; or

(b) medicinal hot water baths for individual use.

History: **Ap. p. Sec. 202, Ch. 197, L. 1967; amd. Sec. 24, Ch. 187, L. 1977; Sec. 69-5502, R.C.M. 1947; (1), (2)En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; R.C.M. 1947, 69-4102(1), (2), 69-5502; amd. Sec. 2, Ch. 646, L. 1985; amd. Sec. 1, Ch. 708, L. 1991; amd. Sec. 139, Ch. 418, L. 1995; amd. Sec. 318, Ch. 546, L. 1995.**

50-53-103. Department rules. (1) The department shall adopt rules relating to the operation of public swimming pools and public bathing places, including rules:

(a) setting standards to ensure sanitation and safety in public swimming pools and public bathing places to protect public health and safety;

(b) relating to the licensing of operators of public swimming pools and public bathing places;

(c) providing procedures for the enforcement of the laws and rules relating to public swimming pools and public bathing places;

(d) relating to cooperative agreements between the department and local boards of health; and

(e) setting performance standards for local boards of health, local health officers, and sanitarians to meet as a condition to receipt of funds provided by the department pursuant to 50-53-218.

(2) Any rule relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings or installation of equipment in buildings is effective only when it has been adopted by the department of commerce as part of the state building code and filed with the secretary of state pursuant to 50-60-204.

History: **En. Secs. 203, 204, Ch. 197, L. 1967; amd. Secs. 104, 109, Ch. 349, L. 1974; R.C.M. 1947, 69-5503, 69-5504; amd. Sec. 3, Ch. 646, L. 1985; amd. Sec. 2, Ch. 708, L. 1991.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Rules for facilities at hotels and motels, 50-51-103.

50-53-104. Powers of health officers — enforcement authority. Authorized employees of the department and local boards of health may:

(1) at reasonable times inspect public swimming pools and public bathing places and otherwise conduct investigations to determine if provisions of this chapter and rules of the department have been or are being violated and make reports to the department concerning the inspections;

(2) request an injunction from the district court to enjoin actions in violation of this chapter or rules adopted by the department;

(3) bring actions to abate nuisances maintained in violation of this chapter in the manner provided by law for the summary abatement of other public nuisances;

(4) file complaints with the district court for assessment of the penalties provided for in 50-53-216 or for recovery of costs provided for in 50-53-217, or both.

History: **En. Sec. 205, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5505; amd. Sec. 3, Ch. 708, L. 1991.**

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

Injunctions, Title 27, ch. 19.

Nuisances, Title 27, ch. 30.

50-53-105. Publication of inspection reports. The department may publish reports of inspections authorized by 50-53-104(1).

History: En. Sec. 206, Ch. 197, L. 1967; R.C.M. 1947, 69-5506.

50-53-106. Duties of pool operators. Each person operating a public swimming pool or public bathing place shall:

(1) operate the pool or public bathing place in a sanitary and safe manner;

(2) keep records of public health and safety information required by the department;

(3) furnish information to the department on forms prescribed by it.

History: En. Sec. 208, Ch. 197, L. 1967; R.C.M. 1947, 69-5508.

50-53-107. Pool operation to be sanitary, healthful, and safe — when lifeguard not required. (1) Public swimming pools and public bathing places, including pool structures, methods of operation, source of water supply, methods of water purification, lifesaving apparatus, safety measures for bathers, and personal cleanliness measures for bathers, shall be sanitary, healthful, and safe.

(2) A lifeguard is not required for a privately owned public swimming pool if:

(a) a sign is prominently displayed on the swimming pool premises with the words "No lifeguard is on duty" or words of substantially the same meaning; and

(b) one individual per shift is on the premises, accessible to the pool, and currently certified as competent in cardiopulmonary resuscitation by either the American red cross or the American heart association.

History: En. Sec. 209, Ch. 197, L. 1967; R.C.M. 1947, 69-5509; amd. Sec. 1, Ch. 302, L. 1983; amd. Sec. 1, Ch. 31, L. 1985.

50-53-108. Unauthorized construction or operation a public nuisance. The construction or operation of a public swimming pool or public bathing place contrary to the provisions of this chapter or rules adopted by the department under the provisions of this chapter is a public nuisance and dangerous to public health and safety.

History: En. Sec. 210, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5510; amd. Sec. 4, Ch. 646, L. 1985.

Cross-References

Public nuisance, Title 27, ch. 30, part 2.

Local boards of health — power to abate nuisances, 50-2-116.

50-53-109. Violation of chapter a misdemeanor. A person who violates this chapter or rules adopted by the department under the provisions of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $25 or more than $500, imprisonment for not more than 6 months, or both. Each day that a violation continues is a separate violation.

History: En. Sec. 211, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5511.

50-53-110 through 50-53-114 reserved.

50-53-115. Special requirements for flow-through hot springs pools. In addition to the other requirements of this chapter and rules promulgated under this chapter, flow-through hot springs pools must meet the following requirements:

(1) The temperature of the pool water must be 106 degrees F or less.

(2) The water must have sufficient clarity at all times so that a black disc, 6 inches in diameter, is readily visible when placed on a white field at the deepest point of the pool.

(3) The pool water must be maintained at a pH of no less than 7.2 and not greater than 8.5.

(4) The pool must provide sufficient water volume exchange to produce an 8-hour turnover of the entire volume of pool water to waste. In addition:

(a) the pool, and all surfaces that flow into the pool, must be drained, cleaned, and sanitized every 72 hours; or

(b) the pool must be disinfected, and a chlorine residual of 1 to 3 parts per million or a bromine residual of 3 to 6 parts per million must be maintained in the pool at all times.

(5) Signs must be prominently posted that specify pool rules and special health hazards associated with swimming or bathing in flow-through hot springs pools. The contents of the signs must be determined by department rule. The department, in developing rules under this section, shall consult with flow-through hot springs pool owners.

History: En. Sec. 1, Ch. 155, L. 1995.

Part 2

Licensure of Public Swimming Pools and Bathing Places

50-53-201. License required — exemption — validation. (1) Except as provided in subsection (3), a person may not operate a public swimming pool or public bathing place without annually obtaining a license from the department.

(2) A separate license is required for each public swimming pool or public bathing place unless more than one public swimming pool is operated on the same premises by the same person, in which case a single license is required for all public swimming pools on the premises.

(3) The state or a political subdivision of the state owning or operating a public swimming pool or public bathing place is not required to obtain a license under subsection (1) but is required to comply with the health and safety requirements in part 1, this part, and department rules.

(4) A license issued by the department is not valid unless signed in accordance with 50-53-206 or in accordance with 50-53-207, in the case of an appeal.

History: En. Sec. 4, Ch. 708, L. 1991; amd. Sec. 218, Ch. 42, L. 1997.

50-53-202. Application for and right to license. (1) An application for both an original and renewal license to operate a public swimming pool or public bathing place must be made to the department, must contain the information required by the department, and must be accompanied by the fee provided for in 50-53-203.

(2) A license must be issued to an applicant who has satisfied the requirements for a license provided in part 1, this part, and department rules.

(3) Upon issuing a license, the department shall forward the license to the appropriate local health officer for validation as provided in 50-53-206.

History: En. Sec. 5, Ch. 708, L. 1991; amd. Sec. 219, Ch. 42, L. 1997.

50-53-203. License fee and late fee — disposition. (1) (a) Except as provided in subsection (1)(b), each application for an original or renewal license must be accompanied by a license fee of $75.

(b) The fee for an original or renewal license for a public swimming pool or public bathing place operated in conjunction with a campground, trailer court, work camp, youth camp, hotel, motel, roominghouse, boardinghouse, retirement home, or tourist home is $50.

(2) An operator of a public swimming pool or public bathing place who fails to renew a license by the expiration date provided in 50-53-204 and who operates the public swimming pool or public bathing place in the license year for which a renewal fee was not paid shall, upon renewal, pay to the department a late renewal fee of $25 in addition to the renewal fee required by subsection (1). Payment of the late renewal fee does not relieve the operator of responsibility for any operation without a license.

(3) The department shall deposit 85% of the fees collected under subsection (1) in the state special revenue fund to the credit of the local board inspection fund account created by 50-2-108. Money deposited in the local board inspection fund account is subject to appropriation by the legislature for the purposes of 50-53-218.

(4) The department shall deposit 15% of the fees collected under subsection (1) and all the fees collected under subsection (2) in an account in the state special revenue fund to be appropriated by the legislature to the department for the enforcement of part 1 and this part.

History: En. Sec. 6, Ch. 708, L. 1991; amd. Sec. 1, Ch. 277, L. 1993; amd. Sec. 220, Ch. 42, L. 1997.

Cross-References

State fund structure, 17-2-102.

50-53-204. License expiration — nontransferability. (1) A license issued under part 1 and this part expires on December 31 of the year of issuance unless it is suspended or canceled by the department before that date.

(2) A license issued under part 1 and this part is not transferable.

History: En. Sec. 9, Ch. 708, L. 1991; amd. Sec. 221, Ch. 42, L. 1997.

50-53-205 reserved.

50-53-206. Validation of license required — validation by local officer. (1) A license issued by the department under part 1 and this part is not valid until it is signed by the local health officer of the jurisdiction in which the public swimming pool or public bathing place is located.

(2) The local health officer shall, within 15 days of receipt of the license, validate or refuse to validate the license. Failure of the officer to validate a license is a refusal for the purposes of 50-53-207.

History: En. Sec. 7, Ch. 708, L. 1991; amd. Sec. 222, Ch. 42, L. 1997.

Cross-References

Local health officer defined, 50-2-101.

50-53-207. Refusal of health officer to validate — appeal to board. (1) A local health officer may refuse to validate a license issued by the department under part 1 and this part only if the officer determines that the license applicant has not met the requirements for the issuance of a license under part 1, this part, and department rules. If the local health officer refuses to validate a license, the officer shall notify the license applicant and the department of the refusal within 5 days of the officer's decision. The notice must state the grounds for the refusal.

(2) The license applicant may appeal the decision of the local health officer to the local board of health by filing a written notice of appeal with the officer and the board within 30 days of the officer's refusal or within 30 days of the expiration of the period for the officer's decision under 50-53-206, whichever is first.

(3) Upon filing the notice of appeal, the license applicant is entitled to a hearing before the board to determine the applicant's eligibility for a license under part 1, this part, and department rules. The hearing must be held pursuant to the contested case procedure of the Montana Administrative Procedure Act. If the board finds that the applicant is entitled to a validated license, the presiding officer of the board shall validate the license by signing the license.

History: En. Sec. 8, Ch. 708, L. 1991; amd. Sec. 223, Ch. 42, L. 1997.

Cross-References

Contested cases — Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

Local health officer defined, 50-2-101.

50-53-208 reserved.

50-53-209. Cooperative agreements — inspections. (1) The department may enter into cooperative agreements with local boards of health to authorize those boards to act as agents of the department and to conduct inspections of and enforce applicable statutes and department rules relating to public swimming pools and public bathing places within the jurisdictions of the respective boards.

(2) The department or a local board of health, pursuant to a cooperative agreement, shall annually conduct:

(a) at least one full facility inspection and one critical point inspection of each public swimming pool or public bathing place operated throughout the year; and

(b) at least one full facility inspection of each seasonal public swimming pool or public bathing place.

History: En. Sec. 10, Ch. 708, L. 1991.

Cross-References

Local boards of health, Title 50, ch. 2.

50-53-210 reserved.

50-53-211. Denial, suspension, or cancellation of license — multiple pool facility. (1) The department may deny, suspend, or cancel a license if it finds that the license applicant or licensee has violated part 1, this part, or department rules and has failed or refused to remedy or correct the violation in accordance with the procedure provided in 50-53-213.

(2) If the license of an operator who operates more than one public swimming pool under one license is denied, suspended, or canceled, the use of

all of the public swimming pools on the premises must cease unless the department determines that the violation for which the license was denied, suspended, or canceled does not affect the operation or the use of all of the public swimming pools on the premises.

History: En. Sec. 11, Ch. 708, L. 1991; amd. Sec. 224, Ch. 42, L. 1997.

50-53-212. Administrative enforcement — notice — department hearing. (1) A license may not be denied, suspended, or canceled or corrective action may not be ordered by the department unless the department delivers to the license applicant or licensee a written notice of violation that contains a written statement of the facts constituting the violation and a citation to the statute or rule of the department alleged to have been violated. Further administrative enforcement action may not be taken by the department pursuant to the notice if within 10 days after receipt of the notice, the license applicant or licensee complies with the provisions of 50-53-213.

(2) The department may combine with any notice issued under subsection (1) an order for the suspension or cancellation of a license or for corrective action as the department finds necessary to remedy the violation evidenced in the notice. The order becomes final 10 days after service unless within that time the license applicant or licensee requests a hearing pursuant to subsection (4) or submits a corrective action plan in accordance with 50-53-213.

(3) The department may combine with any notice or order issued under subsection (1) or (2) an order for the license applicant or licensee to appear before the department within a time specified by the department and show cause why the department should not deny, suspend, or cancel the license or otherwise order compliance with part 1, this part, and the rules of the department.

(4) A hearing request by a license applicant or licensee must be made in writing to the department and must specify the mistake in the facts or law relied on by the department. A hearing held pursuant to this section must be held in accordance with the contested case procedure of the Montana Administrative Procedure Act. Following a hearing, the department may issue an appropriate order. Service of notice or an order mailed by the department is complete upon mailing.

History: En. Sec. 12, Ch. 708, L. 1991; amd. Sec. 225, Ch. 42, L. 1997.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

50-53-213. Compliance with corrective action plan as bar to further administrative enforcement. The department may not deny, suspend, or cancel the license or require corrective action of an operator of a public swimming pool or public bathing place who received a notice of violation from the department pursuant to 50-53-212 if:

(1) the operator submits a plan to correct the violation to the department within 10 days of service of the notice;

(2) the department approves the plan in writing, including the time in which the plan must be complied with; and

(3) the operator complies with the plan within the time period prescribed by the department.

History: En. Sec. 13, Ch. 708, L. 1991.

50-53-214. Return of license for alteration or destruction. Upon cancellation of a license or the right to operate one or more public swimming pools under a single license for the premises, the operator of the public swimming pool shall return the license to the department for destruction of the license or deletion of the listing of the public swimming pool affected by the cancellation. Cancellation by the department of a license to operate a public swimming pool is effective notwithstanding the refusal or failure of an operator to return the license to the department.

History: En. Sec. 14, Ch. 708, L. 1991.

50-53-215 reserved.

50-53-216. Civil penalties — other enforcement not barred. (1) A person who violates a provision of part 1, this part, department rules implementing those sections, an order of the department, or any condition of a license issued by the department is subject to a civil penalty not to exceed $500 for each violation.

(2) An action for collection of a civil penalty under this section does not bar administrative enforcement under 50-53-212, an action for injunctive relief under 50-53-104, or enforcement under 50-53-109.

History: En. Sec. 15, Ch. 708, L. 1991; amd. Sec. 226, Ch. 42, L. 1997.

50-53-217. Recovery of costs by department or local jurisdiction. In a civil or criminal action brought by the department or a local jurisdiction to enforce the requirements of part 1 and this part, the rules of the department, or any condition of a license or to assess civil penalties and in an action brought by the department to enforce an order of the department, the court may, in the case of an intentional violation of part 1 and this part, assess the operator of the public swimming pool or public bathing place for the costs of any investigation and the costs of the civil or criminal action, including reasonable attorney fees.

History: En. Sec. 16, Ch. 708, L. 1991; amd. Sec. 227, Ch. 42, L. 1997.

Cross-References

Costs, Title 25, ch. 10.

50-53-218. Department to pay board for inspections or enforcement, or both. (1) By June 30 of each year, the department shall pay to a local board of health established under 50-2-104, 50-2-106, or 50-2-107 an amount from the local board inspection fund account, created by 50-2-108, for the purpose of inspecting public swimming pools and public bathing places licensed under part 1 and this part or for taking appropriate enforcement action with respect to the public swimming pools and public bathing places, or for both inspection and enforcement. The payment required by this section must be made to a board only if the board and any local health officer and sanitarian for the jurisdiction of the board meet the program performance standards established by department rules.

(2) Money received by the board pursuant to subsection (1) may be used only for the purpose of inspections and enforcement under part 1 and this part and must be used to supplement and not supplant other money received by the board for the same purpose.

(3) The department may use money in the local board inspection fund account appropriated to the department for the enforcement of part 1, this part,

and the rules of the department and for inspections to determine compliance with those sections and rules in any local jurisdiction not receiving payment under subsection (1).

History: **En. Sec. 17, Ch. 708, L. 1991; amd. Sec. 228, Ch. 42, L. 1997.**

CHAPTERS 54 THROUGH 59

RESERVED

CHAPTER 60

BUILDING CONSTRUCTION STANDARDS

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Part 1
General Provisions

50-60-101. Definitions. As used in parts 1 through 4 and part 7 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Alteration" means any change, addition, or modification in construction or occupancy.

(2) "Building" means a combination of any materials, whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property. The term must be construed as though followed by the words "or part or parts thereof".

(3) (a) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation thereof enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and installation of equipment in buildings.

(b) The term does not include zoning ordinances.

(4) "Code enforcement program" means the plan for enforcement of the building regulations adopted by a municipality or county and includes the local building department and the staff associated with executing any aspect of the program's purposes or functions.

(5) "Construction" means the original construction and equipment of buildings and requirements or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

(6) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(7) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

(8) (a) "Factory-built building" means a factory-assembled structure or structures equipped with the necessary service connections but not made so as to be readily movable as a unit or units and designed to be used with a permanent foundation.

(b) The term does not include manufactured housing constructed after June 15, 1976, under the National Mobile Home Construction and Safety Standards Act of 1974 (42 U.S.C. 5401, et seq.).

(9) "Local building department" means the agency or agencies of a municipality charged with the administration, supervision, or enforcement of building regulations, the approval of plans, the inspection of buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required by state or local building regulations.

(10) "Local legislative body" means the council or commission charged with governing the municipality.

(11) (a) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality unless the area is extended at the written request of a municipality.

(b) Upon request of a municipality with the written consent of the county in which the municipality is located, the department may approve extension of the jurisdictional area to include:

(i) all or part of the area within 4 ½ miles of the corporate limits of a municipality;

(ii) all of any platted subdivision that is partially within 4 ½ miles of the corporate limits of a municipality; and

(iii) all of any zoning district adopted pursuant to Title 76, chapter 2, part 1 or 2, that is partially within 4 ½ miles of the corporate limits of a municipality.

(c) Distances must be measured in a straight line on a horizontal plane.

(d) The initial written consent by a county to an extended municipal jurisdiction area must disclose the scope of the building codes to be enforced, the type of structures to be subject to the building codes, and the schedule of fees to be charged for permits. If after the county's initial written consent, the municipality wishes to change either the scope of the building codes enforced or the type of structures covered, the changes must first be approved in writing by the county. Unapproved changes result in the rescission of the county approval of the extended municipal jurisdiction area.

(12) "Municipality" means any incorporated city or town and its jurisdictional area as defined in this section.

(13) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a building.

(14) "Primary function area" means an area of a building or facility in which a major activity for which the building or facility is designed is carried out. Primary function areas include but are not limited to a customer service lobby of a savings institution, a cafeteria dining area, and meeting rooms of a conference center. Areas that are not primary function areas include but are not limited to boiler rooms, storage rooms, employee lounges, janitorial closets, entrances, corridors, and restrooms.

(15) "Public building" means a building or facility owned or operated by a governmental entity or a private sector building or facility that is open to members of the public.

(16) "Public sidewalk" means a sidewalk located in a public right-of-way.

(17) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own mode of power or is mounted on or towed by another vehicle, including but not limited to a:

(a) travel trailer;
(b) camping trailer;
(c) truck camper; or
(d) motor home.

(18) "Site" means a parcel of land bounded by property lines or a designated portion of a public right-of-way.

(19) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

(20) "State building code" means the state building code provided for in 50-60-203 or any portion of the code of limited application and any of its modifications or amendments.

History: En. Sec. 2, Ch. 366, L. 1969; amd. Sec. 1, Ch. 226, L. 1974; amd. Sec. 1, Ch. 244, L. 1975; amd. Sec. 1, Ch. 459, L. 1975; amd. Sec. 1, Ch. 504, L. 1977; R.C.M. 1947, 69-2105; amd. Sec. 1, Ch. 315, L. 1979; amd. Sec. 1, Ch. 555, L. 1981; amd. Sec. 1, Ch. 33, L. 1985; amd. Sec. 8, Ch. 140, L. 1985; amd. Sec. 4, Ch. 352, L. 1985; amd. Sec. 229, Ch. 42, L. 1997; amd. Sec. 5, Ch. 331, L. 1997; amd. Sec. 1, Ch. 488, L. 1997.

50-60-102. Applicability. (1) Except as provided in subsection (5), state building codes do not apply to:

(a) residential buildings containing less than five dwelling units or their attached-to structures, any farm or ranch building of any size, and any private garage or private storage structure of any size used only for the owner's own use, located within the municipality's or county's jurisdictional area, unless the local legislative body or board of county commissioners by ordinance or resolution makes the state building code applicable to these structures;

(b) mines and buildings on mine property regulated under Title 82, chapter 4, and subject to inspection under the Federal Mine Safety and Health Act;

(c) petroleum refineries and pulp and paper mills, except a structure classified under chapter 7, section 701, group B, division 2, and chapter 9, section 901, group H, outside of process units, of the 1991 edition of the Uniform Building Code; or

(d) industrial process piping, vessels, and equipment and process-related structures located outside of another structure occupied on a regular basis by employees or the public.

(2) Except as provided in subsection (5), the state may not enforce the state building code under 50-60-205 for the buildings referred to in subsection (1). Local governments that have made the state building codes applicable to the buildings referred to in subsection (1) may enforce within their jurisdictional areas the state building code as adopted by the respective local government.

(3) When good and sufficient cause exists, a written request for limitation of the state building code may be filed with the department for filing as a permanent record.

(4) The department may limit the application of any rule or portion of the state building code to include or exclude:

(a) specified classes or types of buildings according to use or other distinctions as may make differentiation or separate classification or regulation necessary, proper, or desirable;

(b) specified areas of the state based upon size, population density, special conditions prevailing in the area, or other factors that make differentiation or separate classification or regulation necessary, proper, or desirable.

(5) (a) For purposes of promoting the energy efficiency of home design and operation, the provisions of the state building code relating to energy conservation adopted pursuant to 50-60-203(1) apply to residential buildings, except:

(i) farm and ranch buildings; and

(ii) any private garage or private storage structure attached to a residential building and used only for the owner's own use.

(b) The provisions of the state building code relating to energy conservation in residential buildings are enforceable:

(i) by the department only for those residential buildings containing five or more dwelling units or otherwise subject to the state building code; and

(ii) through the builder self-certification program provided for in 50-60-802 for those residential buildings containing less than five dwelling units and not otherwise subject to the state building code.

History: En. Sec. 4, Ch. 366, L. 1969; amd. Sec. 2, Ch. 226, L. 1974; R.C.M. 1947, 69-2107; amd. Sec. 2, Ch. 555, L. 1981; amd. Sec. 1, Ch. 194, L. 1987; amd. Sec. 60, Ch. 83, L. 1989; amd. Sec. 2, Ch. 383, L. 1993; amd. Sec. 1, Ch. 444, L. 1993; amd. Sec. 2, Ch. 488, L. 1997.

Cross-References

Municipal power to regulate, restrain, or prevent dangerous factories, 7-33-4207.

50-60-103. Administration by department. The department shall administer parts 1 through 4 and for that purpose shall:

(1) issue orders necessary to effectuate the purposes of parts 1 through 4 and enforce the orders by all appropriate administrative and judicial proceedings;

(2) enter, inspect, and examine buildings or premises necessary for the proper performance of its duties under parts 1 through 4;

(3) study the operation of the state building code, local building regulations, and other laws related to the construction of buildings to ascertain their effects upon the cost of building construction and the effectiveness of their provisions for health and safety;

(4) recommend tests or require the testing and approval of materials, devices, and methods of construction to ascertain their acceptability under the requirements of the state building code and issue certification of the acceptability;

(5) appoint experts, consultants, and technical advisers for assistance and recommendations relative to the formulation and adoption of the state building code;

(6) advise, consult, and cooperate with other agencies of the state, local governments, industries, and interested persons or groups; and

(7) consult with the building codes council, established in 50-60-115, on all rules and interpretations of building code provisions and on the checklist for the examination of single-family dwelling construction plans provided for in 50-60-118.

History: En. Sec. 6, Ch. 366, L. 1969; amd. Sec. 3, Ch. 226, L. 1974; R.C.M. 1947, 69-2109; amd. Sec. 5, Ch. 473, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 473 inserted (7) requiring consultation with the building codes council; and made minor changes in style. Amendment effective October 1, 1999.

50-60-104. Inspection fees. The department shall establish a schedule of fees and may collect fees for the inspection of plans and specifications and for the inspection of buildings, factory-built buildings, or any other facility or structure. The fees must be commensurate with the cost of the inspections and with appropriations for other purposes.

History: En. Sec. 4, Ch. 348, L. 1971; amd. Sec. 11, Ch. 226, L. 1974; amd. Sec. 4, Ch. 504, L. 1977; R.C.M. 1947, 69-2124(part); amd. Sec. 1, Ch. 240, L. 1997; amd. Sec. 3, Ch. 346, L. 1997; amd. Sec. 1, Ch. 357, L. 1997.

Cross-References

Inspection of passenger tramways, Title 23, ch. 2, part 7.

50-60-105. Hearings authorized. The department may hold hearings relating to the administration of parts 1 through 4 in accordance with the Montana Administrative Procedure Act.

History: En. Sec. 8, Ch. 366, L. 1969; amd. Sec. 5, Ch. 226, L. 1974; amd. Sec. 2, Ch. 116, L. 1975; amd. Sec. 17, Ch. 504, L. 1975; amd. Sec. 1, Ch. 173, L. 1977; amd. Sec. 16, Ch. 187, L. 1977; amd. Sec. 2, Ch. 504, L. 1977; R.C.M. 1947, 69-2111(2).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

50-60-106. Powers and duties of municipalities. (1) The examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the municipal jurisdictional area are the responsibility of the municipalities of the state.

(2) Each municipality or county certified under 50-60-302 shall, within its jurisdictional area:

(a) examine, approve, or disapprove plans and specifications for the construction of any building, the construction of which is pursuant or purports to be pursuant to the applicable provisions of the state or municipal building code, and direct the inspection of the buildings during and in the course of construction;

(b) require that construction of buildings be in accordance with the applicable provisions of the state or municipal building code, subject to the powers of variance or modification granted to the department;

(c) make available to building contractors at a price that is commensurate with reproduction costs a checklist devised by the department pursuant to 50-60-118 for single-family dwellings and provide to contractors who attach a completed checklist to the plans submitted for examination the relevant building permit or notice of plan disapproval within 10 working days of the contractor's submission;

(d) during and in the course of construction, order in writing the remedying of any condition found to exist in, on, or about any building that is being constructed in violation of the applicable state or municipal building code. Orders may be served upon the owner or the owner's authorized agent personally or by sending by certified mail a copy of the order to the owner or the owner's authorized agent at the address set forth in the application for permission for the construction of the building. A local building department, by action of an authorized officer, may grant in writing time as may be reasonably necessary for achieving compliance with the order. For the purposes of this subsection (2)(d), the phrase "during and in the course of construction" refers to the construction of a building until all necessary building permits have been obtained and the municipality or county has issued formal written approvals or has issued a certificate of occupancy for the building.

(e) issue certificates of occupancy as provided in 50-60-107;

(f) issue permits, licenses, and other required documents in connection with the construction of a building;

(g) ensure that all construction-related fees or charges imposed and collected by the municipality or county are necessary, reasonable, and uniform and are:

(i) except as provided in subsection (2)(g)(iii), used only for building code enforcement, which consists of those necessary and reasonable costs directly and specifically identifiable for the enforcement of building codes, plus indirect costs charged on the same basis as other local government proprietary funds not paying administrative charges as direct charges. If indirect costs are waived for any local government proprietary fund, they must also be waived for the program established in this section. Indirect charges are limited to the charges that are allowed under federal cost accounting principles that are applicable to a local government.

(ii) reduced if the amount of the fees or charges accumulates above the amount needed to enforce building codes for 12 months. The excess must be placed in a reserve account and may only be used for building code enforcement. Collection and expenditure of fees and charges must be fully documented.

(iii) allocated and remitted to the department, in an amount not to exceed 0.5% of the building fees or charges collected, for the building codes education program established in 50-60-116.

(3) Each municipality or county certified under 50-60-302 may, within its jurisdictional area:

(a) make, amend, and repeal rules for the administration and enforcement of the provisions of this section and for the collection of fees and charges related to construction;

(b) prohibit the commencement of construction until a permit has been issued by the local building department after a showing of compliance with the requirements of the applicable provisions of the state or municipal building code; and

(c) enter into a private contract with the owner or builder of a building that is not or will not be within the jurisdiction of the municipality or county under which the municipality or county will provide reviews, inspections, orders, and certificates of occupancy for a fee and under conditions agreed upon by the parties. Municipal or county powers of enforcement may not be exercised.

History: En. Sec. 14, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; R.C.M. 1947, 69-2117(part); amd. Sec. 3, Ch. 488, L. 1997; amd. Sec. 6, Ch. 473, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 473 inserted (1)(c) requiring each municipality or county to provide a checklist and the relevant permit or notice of plan disapproval within 10 working days of submission; in (1)(d) in second sentence after "sending by" deleted "registered or"; in (2)(g)(i) at beginning inserted exception clause; inserted (2)(g)(iii) providing that 0.5% of fees and charges be allocated to the building codes education program; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

General powers of local government, Art. XI, sec. 4, Mont. Const.

Enforcement of building construction standards for modular homes, 50-60-404.

50-60-107. Certificate of occupancy. (1) A certificate of occupancy for a building constructed in accordance with the provisions of the state or municipal building code shall certify that the building conforms to the requirements of the building regulations applicable to it.

(2) Every certificate of occupancy, unless and until set aside or vacated by a court of competent jurisdiction, is binding and conclusive upon all municipal agencies as to all matters set forth, and no order, directive, or requirement at variance therewith may be made or issued by any other state or municipal agency.

History: En. Sec. 14, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; R.C.M. 1947, 69-2117(part).

50-60-108. Construction permit required. Any person who desires to construct a building which is subject to the provisions of parts 1 through 4 must apply for a permit from the appropriate authorities.

History: En. Sec. 10, Ch. 366, L. 1969; amd. Sec. 6, Ch. 226, L. 1974; R.C.M. 1947, 69-2113.

50-60-109. Injunctions authorized. (1) The construction or use of the building in violation of any provision of the state or municipal building code or any lawful order of a state building official or a local building department may be enjoined by a judge of the district court in the judicial district in which the building is located.

(2) This section will be governed by the Montana Rules of Civil Procedure.

History: En. Sec. 15, Ch. 366, L. 1969; R.C.M. 1947, 69-2118.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Injunctions — procedure, Title 27, ch. 19.

50-60-110. Violation a misdemeanor. Any person served with an order pursuant to the provisions of parts 1 through 4 who fails to comply with the order not later than 30 days after service or within the time fixed by the department or a local building department for compliance, whichever is the greater, or any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent, their agents, or any person taking part or assisting in the construction or use of any building who knowingly violates any of the applicable provisions of the state building code or a municipal building code is guilty of a misdemeanor.

History: En. Sec. 16, Ch. 366, L. 1969; amd. Sec. 8, Ch. 226, L. 1974; R.C.M. 1947, 69-2119.

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

50-60-111 through 50-60-114 reserved.

50-60-115. Building codes council — purpose and structure. (1) There is a building codes council for the purpose of assisting the department with the application, implementation, and interpretation of the state building code and building codes adopted by local governments. The council shall work cooperatively with the department and with representatives of the construction industry as well as members of the interested public to harmonize building codes and related rules with both the needs of the construction industry and the public interest in efficiency, cost-effectiveness, and safety.

(2) The council consists of 11 members appointed by the governor, unless otherwise specified, as follows:

(a) a practicing architect licensed in Montana;

(b) a practicing professional engineer licensed in Montana;

(c) a representative from the building contractor industry;

(d) a municipal building inspector;

(e) a representative of the manufactured housing industry;

(f) a member of the general public who does not hold public office and who does not represent the same industry or agency as another council member;

(g) the director of the department of health and human services or the director's designee;

(h) a licensed electrician selected by the board of electricians;

(i) a licensed plumber selected by the board of plumbers;

(j) the state fire marshal or the fire marshal's designee; and

(k) a representative of the home building industry.

(3) The appointed council members serve at the pleasure of the governor for terms of 3 years.

(4) The council is allocated to the department for administrative purposes only as provided in 2-15-121.

(5) The council and its members are entitled to compensation as provided in 2-15-122.

History: En. Sec. 1, Ch. 473, L. 1999.

Compiler's Comments

Effective Date: This section is effective October 1, 1999.

50-60-116. Continuing education — funding support from building fees — special account. (1) There is a building codes education program administered by the department for the purpose of providing continuing education in building code standards and other related topics to interested persons in the construction industry and in regulatory agencies of state and local government.

(2) The building codes education program must be funded entirely from building fee revenue collected by the department, and the department shall allocate 0.5% of the fees that the department collects pursuant to 50-60-104 to the state special revenue account established in subsection (3) to pay the costs of conducting courses and seminars at multiple locations in the state.

(3) There is an account in the state special revenue fund for the purpose of paying the costs of the building codes education program.

(4) The department may expend the funds referred to in subsection (2) to contract with the cooperative extension service, the extended studies programs, other appropriate units of the Montana university system, or private sector entities to develop and conduct the building codes education program.

History: En. Sec. 2, Ch. 473, L. 1999.

Compiler's Comments

Effective Date: This section is effective October 1, 1999.

50-60-117. Building code interpretations — central registry. (1) The department shall, in cooperation with the Montana chapter of the international conference of building officials, develop a process and procedure for:

(a) achieving, to the greatest extent possible, knowledge and acceptance of the department's interpretations by affected parties;

(b) publishing the department's interpretations of building code provisions in a manner that makes the interpretations easily accessible to and obtainable by the public by paper copy and by electronic means; and

(c) maintaining in a central registry easily accessed records of the published interpretations provided for in subsection (1)(b).

(2) The department shall provide to the building codes council, established in 50-60-115, a comprehensive and up-to-date file of the department's interpretations of all building codes in use in Montana.

History: En. Sec. 3, Ch. 473, L. 1999.

Compiler's Comments

Effective Date: This section is effective October 1, 1999.

50-60-118. Examination of single-family dwelling plans — statewide approval for model plans — fee adjustments — mandatory checklist. (1) The department shall accept for examination and approval or disapproval all model construction plans for single-family dwellings submitted to the department.

(2) Once a model construction plan has been approved, the department shall indicate in writing on the approved plan that the plan is acceptable on a

statewide basis and that no further examination is warranted except with respect to:

(a) zoning;
(b) footings, foundations, and basements;
(c) curbs;
(d) gutters;
(e) landscaping;
(f) utility connections;
(g) street requirements;
(h) sidewalks; and
(i) other requirements specifically related to the exterior of the building.

(3) Local building departments shall reduce plan examination fees commensurate with the reduced time and effort expended resulting from the department's examination provided for in subsection (1).

(4) This section may not be construed to reduce the requirements for obtaining permits for onsite inspection of the residence under construction pursuant to 50-60-106.

(5) (a) The department shall devise a checklist for the examination of single-family dwelling construction plans by the department and by the building code enforcement officials of municipalities and counties.

(b) The checklist must be based upon the most recently adopted edition of the council of American building officials One and Two Family Dwelling Code, as amended.

(c) The checklist is subject to review and amendment by the building codes council provided for in 50-60-115.

(d) The checklist must be made available to building contractors at a price that is commensurate with reproduction costs, and a building contractor who uses the checklist and attaches it to the plans that the contractor submits to the department or a municipality or county for examination is entitled to receive the relevant building permit or notice of disapproval within 10 days of submission of the completed checklist.

History: En. Sec. 4, Ch. 473, L. 1999.

Compiler's Comments

Effective Date: This section is effective October 1, 1999.

Part 2

State Building Code

Part Cross-References

Municipal adoption of building, electrical, and plumbing codes, 7-15-4121.

Municipal adoption of fire code, 7-33-4208.

Seal of professional engineer, professional land surveyor, or architect required, 18-2-122.

Department of Commerce approval of school building plans required prior to construction or alteration, 20-6-622.

Municipal building regulations — municipal zoning commission, Title 76, ch. 2, part 3.

50-60-201. Purpose of state building code. The state building code must be designed to effectuate the general purposes of parts 1 through 4 and the following specific objectives and standards to:

(1) provide reasonably uniform standards and requirements for construction and construction materials consistent with accepted standards of design, engineering, and fire prevention practices;

(2) permit to the fullest extent feasible the use of modern technical methods, devices, and improvements that tend to reduce the cost of construction consistent with reasonable requirements for the health and safety of the occupants or users of buildings and, consistent with the conservation of energy, by design requirements and criteria that will result in the efficient use of energy, whether used directly or in a refined form, in buildings;

(3) eliminate restrictive, obsolete, conflicting, and unnecessary building regulations and requirements that tend to unnecessarily increase construction costs, unnecessarily prevent the use of proven new materials that have been found adequate through experience or testing, or provide unwarranted preferential treatment to types or classes of materials, products, or methods of construction;

(4) ensure that any newly constructed public buildings and certain altered public buildings are readily accessible to and usable by persons with disabilities, according to the principles applicable to accessibility to public buildings for persons with disabilities in the state building code;

(5) ensure statewide uniformity in the inspection and enforcement of exterior features of all newly constructed public buildings and certain altered public buildings, including building sites, for physical accessibility to people with disabilities;

(6) encourage efficiencies of design and insulation that enable buildings to be heated in the winter with the least possible quantities of energy and to be kept cool in the summer without air conditioning equipment or with the least possible use of the equipment;

(7) encourage efficiencies and criteria directed toward design of building envelopes with high thermal resistance and low air leakage and toward requiring practices in the design and selection of mechanical, electrical, and illumination systems that promote the efficient use of energy;

(8) provide, to the greatest extent possible, with the advice and consent of the building codes council and the Montana chapter of the international conference of building officials, a broadly uniform system of building code interpretations for the purposes of predictability, fairness, and efficiency.

History: En. Sec. 7, Ch. 366, L. 1969; amd. Sec. 4, Ch. 226, L. 1974; amd. Sec. 1, Ch. 116, L. 1975; R.C.M. 1947, 69-2110; amd. Sec. 1, Ch. 65, L. 1985; amd. Sec. 6, Ch. 331, L. 1997; amd. Sec. 48, Ch. 472, L. 1997; amd. Sec. 7, Ch. 473, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 473 inserted (8) requiring the state building code to provide a broadly uniform system of building code interpretations; and made minor changes in style. Amendment effective October 1, 1999.

50-60-202. Department to be sole state agency to promulgate building regulations — exception. No state agency except the department may promulgate building regulations as defined in 50-60-101, except the department of justice may promulgate regulations relating to use of buildings and installation of equipment. The state fire prevention and investigation program of the department of justice shall review building plans and regulations for conformity with rules promulgated by the department.

History: **En. 69-2125 by Sec. 13, Ch. 504, L. 1977; R.C.M. 1947, 69-2125; amd. Sec. 1, Ch. 706, L. 1991.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

State fire prevention and investigation program, Title 50, ch. 3.

50-60-203. Department to adopt state building code by rule. (1) (a) The department shall adopt rules relating to the construction of, the installation of equipment in, and standards for materials to be used in all buildings or classes of buildings, including provisions dealing with safety, accessibility to persons with disabilities, sanitation, and conservation of energy. The adoption, amendment, or repeal of a rule is of significant public interest for purposes of 2-3-103.

(b) Rules concerning the conservation of energy must conform to the policy established in 50-60-801 and to relevant policies developed under the provisions of Title 90, chapter 4, part 10.

(2) The department may adopt by reference nationally recognized building codes in whole or in part and may adopt rules more stringent than those contained in national codes.

(3) The rules, when adopted as provided in parts 1 through 4, constitute the "state building code" and are acceptable for the buildings to which they are applicable.

(4) The department shall adopt rules that permit the installation of below-grade liquefied petroleum gas-burning appliances.

(5) (a) The department shall, by rule, adopt by reference the most recently published edition of the national fire protection association's publication NFPA 99C for the installation of medical gas piping systems. The department may, by rule, issue plumbing permits for medical gas piping systems and require inspections of medical gas piping systems.

(b) A state or local government building code compliance officer shall, as part of any inspection, request proof of a medical gas piping installation endorsement from any person who is required to hold an endorsement or who, in the inspector's judgment, appears to be involved with onsite medical gas piping activity. The inspector shall report any instance of endorsement violation to the inspector's employing agency, and the employing agency shall report the violation to the board of plumbers.

History: **En. Sec. 8, Ch. 366, L. 1969; amd. Sec. 5, Ch. 226, L. 1974; amd. Sec. 2, Ch. 116, L. 1975; amd. Sec. 17, Ch. 504, L. 1975; amd. Sec. 1, Ch. 173, L. 1977; amd. Sec. 16, Ch. 187, L. 1977; amd. Sec. 2, Ch. 504, L. 1977; R.C.M. 1947, 69-2111(part); amd. Sec. 1, Ch. 350, L. 1991; amd. Sec. 3, Ch. 383, L. 1993; amd. Sec. 1, Ch. 140, L. 1997; amd. Sec. 7, Ch. 331, L. 1997; amd. Sec. 4, Ch. 488, L. 1997; amd. Sec. 1, Ch. 486, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 486 inserted (5)(a) and (5)(b) regarding medical gas piping. Amendment effective April 27, 1999.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-60-204. Public hearing required — effective date of certain rules. (1) Except as provided in subsection (2), a rule, amendment, or repeal of the state building code is a matter of significant public interest for purposes of 2-3-103 and may not take effect until after a public hearing by the department.

(2) If a hearing with adequate public notice pursuant to 2-3-103 has been held by the department of justice with respect to the duties contained in chapter 3 of this title or by the board of plumbers, the department of public health and human services, or the state electrical board on a proposed rule relating to building and equipment standards in their respective fields, a public hearing by the department is not required. The proposed rule is effective upon approval of the department and filing with the secretary of state as a part of the state building code.

History: En. Sec. 8, Ch. 366, L. 1969; amd. Sec. 5, Ch. 226, L. 1974; amd. Sec. 2, Ch. 116, L. 1975; amd. Sec. 17, Ch. 504, L. 1975; amd. Sec. 1, Ch. 173, L. 1977; amd. Sec. 16, Ch. 187, L. 1977; amd. Sec. 2, Ch. 504, L. 1977; R.C.M. 1947, 69-2111(part); amd. Sec. 17, Ch. 546, L. 1979; amd. Sec. 173, Ch. 575, L. 1981; amd. Sec. 1, Ch. 706, L. 1991; amd. Sec. 140, Ch. 418, L. 1995; amd. Sec. 319, Ch. 546, L. 1995; amd. Sec. 5, Ch. 488, L. 1997.

Cross-References

Department of Public Health and Human Services, Title 2, ch. 15, part 22.

State Electrical Board, Title 37, ch. 68, part 2.

Board of Plumbers, Title 37, ch. 69, part 2.

State fire prevention and investigation program, Title 50, ch. 3.

50-60-205. When state building code applies — health care facility and public health center doors. (1) If a municipality or county does not adopt a building code as provided in 50-60-301, the state building code applies within the municipal or county jurisdictional area and the state will enforce the code in these areas.

(2) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in 50-5-101 or to a public health center as defined in 7-34-2102.

History: En. Sec. 9, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; amd. Sec. 3, Ch. 504, L. 1977; R.C.M. 1947, 69-2112(2); amd. Sec. 1, Ch. 168, L. 1983; amd. Sec. 14, Ch. 93, L. 1997.

50-60-206. Variances to state building code. (1) The department has the power, on satisfactory proof after a public hearing, to:

(a) vary or modify, in whole or part, the application of any provision or requirement of the state building code if strict compliance would cause any undue hardship; but no variance or modification shall affect adversely provisions for health, safety, and security, and equally safe and proper alternatives may be prescribed therefor;

(b) reverse, modify, or annul, in whole or part, any ruling, direction, determination, or order of any state agency affecting or relating to the construction of any building, the construction of which is pursuant or purports to be pursuant to the provisions of the state building code;

(c) review within 30 days after disapproval any application for permission for the construction of a building pursuant to the provisions of the state building code or plans or specifications submitted in connection therewith;

(d) reverse, modify, or annul the disapproval in whole or part;

(e) within 30 days make a determination that the application or plans or specifications are in compliance with the provisions of the state building code. If this determination is made, the officer charged with the duty shall issue any permit, license, certificate, authorization, or other document required for the construction.

(2) An application for a variance, modification, reversal, annulment, or review may be made by any person aggrieved pursuant to the Montana Administrative Procedure Act.

(3) An application for a variance, modification, reversal, annulment, or review shall stay all proceedings in furtherance of the action appealed from unless there is a showing by the state agency that a stay would involve imminent peril to life or property.

(4) The department, in hearings conducted under this section, shall not be bound by common-law or statutory rules of evidence.

History: En. Sec. 11, Ch. 366, L. 1969; amd. Sec. 7, Ch. 226, L. 1974; R.C.M. 1947, 69-2114.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

50-60-207 through 50-60-210 reserved.

50-60-211. Inspections. (1) The construction of a public building or alteration to a primary function area of a public building must be inspected for physical accessibility to persons with disabilities.

(2) The inspection must include the building site, including applicable exterior features, such as parking areas, passenger loading zones, private sidewalks, and the accessibility from adjacent public sidewalks, public streets, and public transportation stops.

(3) (a) The inspections must be completed by state building inspectors in areas not covered by a municipal or county building code.

(b) (i) Municipalities and counties that have adopted a building code may assign appropriately trained personnel to perform site inspections conducted pursuant to this part.

(ii) Municipalities and counties conducting inspections pursuant to this section must have an enforcement mechanism in place to ensure compliance with the accessibility provisions of this part, including but not limited to denying building permits or certificates of occupancy, injunctions, or other civil enforcement procedures allowed by law.

(4) Existing public buildings that are not undergoing an alteration to a primary function area are not subject to the inspection provisions of this section.

History: En. Sec. 1, Ch. 331, L. 1997.

Cross-References

Adoption of ordinances by local governmental units, Title 7, ch. 5, parts 1 and 42.

Injunctions, Title 27, ch. 19.

50-60-212. Disclaimer. A building permit or certificate of occupancy issued by the state or by a municipality or county must contain a statement that reads: "Compliance with the requirements of the state building code for physical accessibility to persons with disabilities does not necessarily guarantee compliance with the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, the Fair Housing Amendments Act of 1988, Title 49, chapter 2, commonly known as the Montana Human Rights Act, or other similar federal, state, or local laws that mandate accessibility to commercial construction or multifamily housing."

History: **En. Sec. 2, Ch. 331, L. 1997.**

50-60-213. Accessible exterior routes — exceptions. (1) Except as provided in subsection (6), for a public building, an accessible exterior route must be provided from public transportation stops located within the boundary of the building site, from accessible parking and accessible passenger loading zones within the boundaries of the building site, and from public sidewalks that are immediately adjacent to the building site, if sidewalks exist, to the building's accessible entrance served by the transportation stops, parking and loading zones, or sidewalks.

(2) (a) When more than one public building is located on a site, at least one accessible exterior route must connect accessible elements, facilities, and buildings that are on the site.

(b) For the purposes of 50-60-214 and this section, "element" means an architectural or mechanical component of a public building, facility, space, or site and includes but is not limited to telephones, curb ramps, doors, drinking fountains, seating, and water closets.

(3) An accessible exterior route between accessible public parking and an accessible building entrance must be the most practical direct route.

(4) (a) A person or entity constructing a public building is not required to fully comply with the provisions of this section if the person can demonstrate that due to characteristics of the terrain, it is structurally impractical to fully comply.

(b) Full compliance may be considered structurally impractical only in those rare circumstances when the unique characteristics of the terrain prevent the incorporation of accessibility features.

(c) The person or entity shall comply with the provisions of this section to the extent that compliance is not structurally impractical.

(d) The department shall adopt rules to assist all interested parties involved in the design, construction, and inspection processes in determining structural impracticality.

(5) (a) If a paved parking lot is not planned or present for a public building, a person or entity constructing the public building is not required to pave the entire lot, unless otherwise required by law, ordinance, or applicable building code, but shall provide pavement or a similarly firm, stable, and slip-resistant surface for parking spaces designated for persons with disabilities.

(b) An accessible exterior route with a suitably firm, stable, and slip-resistant surface must be provided from the designated parking spaces to an accessible building or facility entrance.

(c) The total number of designated accessible parking spaces in a parking lot or area must be the number provided for in the applicable state or local government building code.

(6) An accessible route is not required in cases where there is not a pedestrian route for the general public.

(7) The state, municipalities, and counties shall use the same accessibility standards.

History: **En. Sec. 3, Ch. 331, L. 1997.**

50-60-214. Alteration of primary function area. (1) An alteration that affects or could affect the use of or access to a primary function area in a public building must be made to ensure, to the extent possible, that the path of travel to the altered primary function area and the restrooms, telephones, and drinking fountains serving the altered primary function area are readily accessible and usable by persons with disabilities.

(2) (a) A person or entity is not required to make alterations to provide an accessible path of travel to an altered primary function area if in terms of cost and scope the alterations to the path of travel are disproportionate to the cost of the alterations to the primary function area. Alterations to a path of travel to an altered primary function area must be considered disproportionate if the cost exceeds 20% of the cost of the alterations to the primary function area. This subsection does not prohibit an expenditure to alter a path of travel that exceeds 20% of the cost of the alterations to a primary function area.

(b) If the cost of altering a path of travel to an altered primary function area is disproportionate as provided in subsection (2)(a), the path of travel must be made accessible to the extent possible without incurring disproportionate costs. The alterations to the path of travel must be made by providing, in the following order or priority:

(i) an accessible entrance and accessible exterior route to the accessible entrance from accessible parking and passenger loading zones or from a public sidewalk if the public sidewalk is immediately adjacent to the public building site;

(ii) an accessible path of travel to the altered primary function area;

(iii) accessible restrooms for each sex or a single unisex restroom when allowed by the applicable building code; and

(iv) accessible elements, including but not limited to storage spaces and alarms.

(3) A person or entity subject to the provisions of this section is also subject to the provisions of 50-60-213(5)(a) and (5)(b).

History: En. Sec. 4, Ch. 331, L. 1997.

Part 3

Municipal and County Building Codes

Part Cross-References

Municipal adoption of building, electrical, and plumbing codes, 7-15-4121.

Municipal powers relating to fire escapes and safety exits, 7-15-4124.

Municipal adoption of fire code, 7-33-4208.

Seal of professional engineer, professional land surveyor, or architect required, 18-2-122.

Municipal building regulations — municipal zoning commission, Title 76, ch. 2, part 3.

50-60-301. Municipal and county building codes authorized — health care facility and public health center doors — fee adjustment for model plans. (1) The local legislative body of a municipality or county may adopt a building code by ordinance to apply to the municipal or county jurisdictional area.

(2) A municipal or county building code may include only codes adopted by the department.

(3) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms

does not apply to health care facilities, as defined in 50-5-101, or to a public health center, as defined in 7-34-2102.

(4) (a) When the same single-family dwelling plan is constructed at more than one site, the municipality or county shall, after the first examination of the plan, adjust the required plan fee to reflect only the cost of reviewing requirements pertaining to the review of:

(i) zoning;
(ii) footings, foundations, and basements;
(iii) curbs;
(iv) gutters;
(v) landscaping;
(vi) utility connections;
(vii) street requirements;
(viii) sidewalks; and
(ix) other requirements related specifically to the exterior of the building.

(b) If a building contractor alters the single-family dwelling plan referred to in subsection (4)(a) in a fashion that substantially affects the building code requirements, the municipality or county may impose the full examination fee permitted under 50-60-106.

History: En. Sec. 9, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; amd. Sec. 3, Ch. 504, L. 1977; R.C.M. 1947, 69-2112(1); (3) En. Sec. 1, Ch. 168, L. 1983; amd. Sec. 15, Ch. 93, L. 1997; amd. Sec. 8, Ch. 473, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 473 inserted (4) regarding plan fees for the same single-family dwelling plan constructed at more than one site; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

General powers of local government, Art. XI, sec. 4, Mont. Const.

Applicability of state building code, 50-60-205.

50-60-302. Certification of municipal and county building codes. (1) A county or municipality may not enforce a building code unless:

(a) the code enforcement program has been certified by the department as in compliance with applicable statutes and department certification rules;

(b) the current adopted code, a current list of fees to be imposed, and a current plan for enforcement of the code have been filed with and approved by the department; and

(c) all inspectors inspecting or approving any installations, which if accomplished commercially require state licensure, must themselves be properly and currently state-licensed as journeymen in that craft or occupation or be certified by a nationally recognized entity for testing and certification of inspectors that is approved by the department before being permitted to inspect or approve any installations.

(2) The department shall adopt additional rules and standards governing the certification of municipal and county building code enforcement programs which must include provisions for prompt revocation of certification for refusal or failure to comply with any applicable statute or rule. The department may allow a county or municipality a reasonable amount of time, not to exceed 6 months, to correct identified code enforcement program deficiencies, unless the deficiencies constitute an immediate threat to the public health, safety, or welfare, in which case the department may require immediate correction. Failure to correct deficiencies within the time set by the department constitutes

a basis for immediate decertification of the code enforcement program. Continued operation of a county or municipal code enforcement program in violation of a department order to correct deficiencies may be enjoined or subject to a writ of mandamus by a judge of the district court in the jurisdiction in which the county or municipality is located. The rules and standards must include provisions for the department to ensure that all code enforcement program functions are being properly performed.

(3) In addition to maintaining the continued compliance oversight required in subsection (1), the department shall require a detailed and fully documented annual report from a local government with a certified code enforcement program to ensure continued local government compliance with all requirements of applicable statutes and rules. If review of the annual report identifies compliance problems, the department shall immediately conduct an onsite evaluation.

(4) If the certification of any local government code enforcement program is revoked for any violation or deficiency, the state resumes its original jurisdiction for state building code enforcement within the municipal or county area and the local government retains the responsibility for completion of inspections and issuance of certificates of occupancy on any incomplete construction projects previously permitted by the local government, unless the reason for the decertification is directly related to the protection of health, safety, and welfare of the public.

(5) If a local government voluntarily decertifies its code enforcement program, the department must be given written notification of the intended decertification at least 90 days prior to the date of decertification. The local government retains the responsibility for completion of inspections and issuance of certificates of occupancy on any incomplete construction projects permitted by the local government prior to decertifying its code enforcement program.

History: En. Sec. 9, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; amd. Sec. 3, Ch. 504, L. 1977; R.C.M. 1947, 69-2112(3), (4); amd. Sec. 6, Ch. 488, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-60-303. Municipal appeal procedure. (1) If a municipality adopts a municipal building code, it shall also establish an appeal procedure by ordinance which is acceptable to the department.

(2) If a municipality does not adopt a code, appeals on the application of the state building code within the municipal jurisdictional area shall be made to the department.

History: En. Sec. 13, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; R.C.M. 1947, 69-2116.

Cross-References

Contested cases — Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

Part 4
Factory-Built Buildings and Recreational Vehicles

50-60-401. Department to adopt rules for factory-built buildings. The department may adopt by reference nationally recognized construction standards, in whole or in part, for the construction of factory-built buildings, but this does not prevent the department from adopting rules more stringent than those contained in the national standards.

History: En. Sec. 2, Ch. 348, L. 1971; amd. Sec. 9, Ch. 226, L. 1974; R.C.M. 1947, 69-2122; amd. Sec. 2, Ch. 33, L. 1985; amd. Sec. 2, Ch. 240, L. 1997.

Cross-References

Adoption of rule by reference, 2-4-307.

50-60-402. Factory-built buildings and recreational vehicles to comply with standards. (1) A person, firm, or corporation may not manufacture, sell, or offer for sale any new factory-built building unless the factory-built building and its components, systems, and appliances have been constructed and assembled in accordance with the standards defined in this part.

(2) A factory-built building that has been approved by the department is considered to be in full compliance with the standards and rules prescribed in parts 1 through 4.

(3) All factory-built buildings approved by the department are acceptable as meeting the requirements of parts 1 through 4 throughout the state of Montana without further inspection or fees except for zoning, utility connections, and foundation permits required by local ordinance.

(4) A person, firm, or corporation may not manufacture, sell, or offer for sale a new recreational vehicle unless the vehicle has been constructed and assembled in accordance with the American national standards institute ANSI/A119.2 standard for recreational vehicles. The department is not responsible for enforcing the compliance of recreational vehicles with the ANSI/A119.2 standard as part of the state building code.

History: En. Sec. 3, Ch. 348, L. 1971; amd. Sec. 10, Ch. 226, L. 1974; amd. Sec. 2, Ch. 459, L. 1975; R.C.M. 1947, 69-2123; amd. Sec. 3, Ch. 33, L. 1985; amd. Sec. 3, Ch. 240, L. 1997.

50-60-403. Use of independent testing laboratories authorized. The department may use independent testing laboratories or the agencies of other states to determine if approved models of factory-built buildings are being constructed in accordance with the approved plans and specifications for those models.

History: En. Sec. 4, Ch. 348, L. 1971; amd. Sec. 11, Ch. 226, L. 1974; amd. Sec. 4, Ch. 504, L. 1977; R.C.M. 1947, 69-2124(part); amd. Sec. 4, Ch. 240, L. 1997.

50-60-404. Enforcement of building construction standards for modular homes. (1) The provisions of this chapter apply to factory-built modular or prebuilt homes or buildings.

(2) A municipality may regulate the construction of factory-built modular or prebuilt homes or buildings as provided in 50-60-106 if:

(a) the homes or buildings are constructed inside the jurisdiction of the municipality;

(b) the homes or buildings are sold primarily to persons in the county in which the factory is located;

(c) the factory does not manufacture more than 100 homes or buildings a year; and

(d) the municipality has an agency or officer assigned to inspect and enforce building construction standards.

(3) Inspection and enforcement approval given by a municipality under this section may be recognized and accepted by any other municipality of the state to which the factory-built home or building is transported for final installation. Additional inspections need not be conducted.

History: En. Sec. 1, Ch. 440, L. 1979.

Cross-References

General powers of local government, Art. XI, sec. 4, Mont. Const.

Part 5

Plumbing Installations

Part Cross-References

Plumber licensing, Title 37, ch. 69, part 3.

50-60-501. Declaration of public interest. It is hereby declared that the public health and welfare require that minimum standards for the planning, installing, altering, extending, repairing, and maintaining of plumbing systems be established for the protection of the people of the state.

History: En. Sec. 1, Ch. 251, L. 1959; R.C.M. 1947, 66-2412.

50-60-502. No penalties for hiring unlicensed plumbers. This part shall not be construed as imposing any penalty on any person for hiring or contracting with an unlicensed person to do work in the field of plumbing. However, any person who shall himself engage in the field of plumbing at a time when he is not duly licensed shall be subject to the penalties imposed by this part and Title 37, chapter 69.

History: En. Sec. 4, Ch. 251, L. 1959; amd. Sec. 8, Ch. 497, L. 1975; R.C.M. 1947, 66-2415.

50-60-503. Exceptions. This part shall not be construed to apply to or to affect plumbing installations in any mines, mills, smelters, refineries, public utilities, railroads, or plumbing installations on farms having their own individual water supply or sewage disposal system.

History: En. Sec. 15, Ch. 251, L. 1959; amd. Sec. 1, Ch. 44, L. 1973; amd. Sec. 12, Ch. 497, L. 1975; R.C.M. 1947, 66-2426.

50-60-504. Department to prescribe minimum standards. The department of commerce shall by rule prescribe minimum standards which are uniform and which are thereafter effective for all plumbing installations or maintenance, except where exempt by 50-60-503.

History: En. Sec. 5, Ch. 251, L. 1959; amd. Sec. 18, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 236, Ch. 350, L. 1974; amd. Sec. 9, Ch. 497, L. 1975; amd. Sec. 5, Ch. 504, L. 1977; R.C.M. 1947, 66-2416; amd. Sec. 5, Ch. 352, L. 1985.

Cross-References

Department of Commerce, Title 2, ch. 15, part 18.

50-60-505. Permit required. (1) It is unlawful for any person to engage in the business, trade, or work having to do with the installation, removal, alteration, or repair of plumbing and drainage systems or parts thereof without first obtaining a permit from the department of commerce.

(2) A separate permit shall be obtained for each building or structure.

(3) No person may allow any other person to do or cause to be done any work under a permit secured by the permittee except persons in his employ.

(4) When a permit has been obtained to connect an existing building or existing work to the public sewer or to connect to a new private disposal facility, backfilling of private sewage disposal facilities abandoned consequent to the connection is included in the permit.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(part); amd. Sec. 6, Ch. 352, L. 1985.

50-60-506. Exceptions to permit requirement. (1) No permit is required for any minor replacement or repair work, the performance of which does not have a significant potential for creating a condition hazardous to public health and safety.

(2) No permit is required where the installation is exempt under the provisions of 37-69-102 or 50-60-503.

(3) No state permit is required whenever the installation occurs in an area governed by a municipality and where there is in effect a municipal building code which covers plumbing installations and which provides inspection procedures.

(4) Nothing contained in this part shall prohibit the owner of residential property from making an installation for all sanitary plumbing and potable water supply piping without a permit providing he does the work himself.

(5) The provisions of this part do not apply to regularly employed maintenance personnel doing maintenance work on the business premises of their employer unless work is subject to the permit provisions of this part.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(2).

50-60-507. Application for and issuance of permit. (1) A person required to apply for a permit shall make application on forms provided by the department of commerce or its authorized representative. He shall give a description of the character of the work proposed to be done and the location, ownership, occupancy, and use of the premises in connection therewith.

(2) The department or its authorized representative may require sketches, specifications, or drawings and such other information it deems necessary in order to determine the scope of the work contemplated.

(3) If the department determines that the sketches, specifications, drawings, descriptions, and information furnished by the applicant are in compliance with the state plumbing code, it shall issue the permit applied for upon payment of the required fee as established by the department.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(3); amd. Sec. 7, Ch. 352, L. 1985.

50-60-508. Permit fees. (1) The department of commerce shall establish permit fees in accordance with the Montana Administrative Procedure Act, and the fees must be deposited to the state special revenue fund of the department for use in the administration and enforcement of this part and the Montana state plumbing code and for other purposes as established by law.

(2) For the purpose of 50-60-505 through 50-60-513, a sanitary plumbing outlet on or to which a plumbing fixture or appliance may be set or attached must be construed to be a fixture. Fees for reconnection and retest of plumbing systems in relocated buildings must be based on the number of plumbing fixtures, gas systems, water heaters, and the like involved. The fees established pursuant to this section must be commensurate with the costs of the administration and enforcement of this part and with appropriations for other purposes.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(part); amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 8, Ch. 352, L. 1985; amd. Sec. 3, Ch. 11, Sp. L. July 1992; amd. Sec. 2, Ch. 357, L. 1997.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

State fund structure, 17-2-102.

50-60-509. Person commencing work without a permit to pay double the permit fee — exception. Any person who commences any work for which a permit is required without first obtaining a permit shall, if subsequently permitted to obtain a permit, pay double the permit fee for the work, except that this provision does not apply to emergency work when it is proved to the satisfaction of the department of commerce or its authorized representative that the work was urgently necessary and that it was not practical to obtain a permit before the commencement of the work. In all such cases, a permit shall be obtained as soon as it is practical to do so, and if there is unreasonable delay in applying for the permit, a double fee shall be charged.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(part); amd. Sec. 9, Ch. 352, L. 1985.

50-60-510. Inspections to ensure compliance. All plumbing and drainage systems may be inspected by the department of commerce or an authorized representative or a municipality or county certified to perform an inspection pursuant to 50-60-302 in order to ensure compliance with the requirements of the state plumbing code. As part of any inspection, the inspector shall request proof of licensure from any person who is required to be licensed who is involved with or, in the inspector's judgment, appears to be involved with plumbing activities if the person is on the site. The inspector shall report any instance of license violation to the inspector's employing agency and the employing agency shall in turn report the violation to the board of plumbers.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(5); amd. Sec. 10, Ch. 352, L. 1985; amd. Sec. 1, Ch. 379, L. 1997.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-60-511. Duty of permittee regarding inspection and compliance. (1) It is the duty of the person doing work authorized by the permit to notify the department of commerce, orally or in writing, that the work is ready for inspection. The notification shall be given not less than 24 hours before the work is to be inspected.

(2) It is the duty of the person doing the work authorized by the permit to ensure that the work performed before notification and after notification pending inspection complies with the state plumbing code.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(6); amd. Sec. 11, Ch. 352, L. 1985.

50-60-512. Department authorized to order work stopped for noncompliance. Whenever any work is being done contrary to the provisions of the state plumbing code, the department of commerce or its authorized representative may, after a hearing conducted under the provisions of the Montana Administrative Procedure Act, order work stopped by notice in writing served on any person engaged in the work.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(7); amd. Sec. 12, Ch. 352, L. 1985.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

50-60-513. Suspension or revocation of permit. The department of commerce may suspend or revoke a permit whenever it is issued in error or on the basis of incorrect information supplied or work performed thereunder is in violation of any of the provisions of this part or Title 37, chapter 69.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(8); amd. Sec. 13, Ch. 352, L. 1985.

50-60-514. District court — jurisdiction — restraining orders. The district court of any county has jurisdiction in equity, on application of the department of commerce, to restrain from connection any new plumbing installations on finding, after hearing, that the plumbing is inferior to the standards of the state plumbing code.

History: En. Sec. 6, Ch. 251, L. 1959; amd. Sec. 237, Ch. 350, L. 1974; amd. Sec. 6, Ch. 504, L. 1977; R.C.M. 1947, 66-2417; amd. Sec. 14, Ch. 352, L. 1985.

Cross-References

Injunctions, Title 27, ch. 19.

50-60-515. Penalty for violations — exceptions. A person who works at the field of plumbing or maintains or conducts a plumbing business or an individual who connects or disconnects plumbing from a public water or sewer system in violation of any provisions of this part or at a time when he is not exempt from the provisions of this part pursuant to the provisions of a duly enacted and subsisting ordinance of a city or town is guilty of a misdemeanor and, upon conviction thereof in any court of competent jurisdiction, shall be punished by a fine of not less than $10 and not more than $100 for each separate offense. However, this part shall not be construed to apply to or affect plumbing or pipefitting as indicated in the 37-69-102 and 50-60-503 exceptions.

History: **En. Sec. 11, Ch. 203, L. 1949; amd. Sec. 4, Ch. 185, L. 1961; amd. Sec. 7, Ch. 497, L. 1975; amd. Sec. 23, Ch. 101, L. 1977; R.C.M. 1947, 66-2411.**

Part 6

Electrical Installations

Part Cross-References

Licensing of electricians, Title 37, ch. 68, part 3.

Electrical easements, 70-17-101, 70-17-102.

50-60-601. Purpose. The purpose of this part is to protect the health and safety of the people of this state from the danger of electrically caused shocks, fires, and explosions; to protect property from the hazard of electrically caused fires and explosions; to establish a procedure for determining where and by whom electrical installations are to be made; and to insure that the electrical installations and electrical products made and sold in this state meet minimum safety standards.

History: **En. Sec. 2, Ch. 148, L. 1965; amd. Sec. 19, Ch. 366, L. 1969; amd. Sec. 1, Ch. 425, L. 1973; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 269, Ch. 350, L. 1974; amd. Sec. 8, Ch. 504, L. 1977; R.C.M. 1947, 66-2802(part).**

50-60-602. Exceptions. (1) This part does not apply to:

(a) the installation, alteration, or repair of electrical signal or communications equipment owned or operated by a public utility or a city; or

(b) electrical installations on the premises of petroleum refineries, except a structure classified under chapter 7, section 701, group B, division 2, and chapter 9, section 901, group H, outside of process units, of the 1991 edition of the Uniform Building Code.

(2) The inspection provisions of this part do not apply to regularly employed maintenance electricians doing maintenance work on the business premises of their employer nor do they apply to line work on the business premises of the employer or to ordinary and customary in-plant or onsite installations, modifications, additions, or repairs.

(3) Any person who plugs in an electrical appliance where an approved electrical outlet is already installed may not be considered as an installer.

(4) This part does not in any manner interfere with, hamper, preclude, or prohibit any vendor of any electrical appliance from selling, delivering, and connecting any electrical appliance if the connection does not necessitate the installation of electrical wiring of the structure where the appliance is to be connected.

History: **En. Sec. 12, Ch. 148, L. 1965; amd. Sec. 1, Ch. 423, L. 1973; amd. Sec. 1, Ch. 269, L. 1975; R.C.M. 1947, 66-2812(part); amd. Sec. 2, Ch. 444, L. 1993.**

50-60-603. Electrical installations to comply with building codes adopted by department. (1) All installations in this state of wires and equipment to convey electric current and installations of apparatus to be operated by current, except as provided in 50-60-602, shall be made substantially in accord with building codes adopted by the department of commerce.

(2) Rules and standards relating to buildings and equipment shall be promulgated by the department.

History: En. Sec. 2, Ch. 148, L. 1965; amd. Sec. 19, Ch. 366, L. 1969; amd. Sec. 1, Ch. 425, L. 1973; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 269, Ch. 350, L. 1974; amd. Sec. 8, Ch. 504, L. 1977; R.C.M. 1947, 66-2802(part); amd. Sec. 15, Ch. 352, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-60-604. Inspections — electrical permits — fees. The department of commerce or an authorized representative or a municipality or county certified to perform an inspection pursuant to 50-60-302 shall inspect electrical installations, issue electrical permits for these installations, and establish and charge a reasonable and uniform fee for the inspections. The fee must be commensurate with the expense of providing the inspection and with appropriations for other purposes. As part of any inspection, the inspector shall require proof of licensure from any person who is required to be licensed who is involved with or, in the inspector's judgment, appears to be involved with electrical installations if the person is on the site. The inspector shall report any instance of license violation to the inspector's employing agency, and the employing agency shall in turn report the violation to the board of electricians.

History: En. 66-2805.1 by Sec. 273, Ch. 350, L. 1974; amd. Sec. 9, Ch. 504, L. 1977; R.C.M. 1947, 66-2805.1(1); amd. Sec. 16, Ch. 352, L. 1985; amd. Sec. 3, Ch. 357, L. 1997; amd. Sec. 2, Ch. 379, L. 1997.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-60-605. Power supplier not to energize installation without inspection tag. Individuals, firms, cooperatives, corporations, or municipalities selling electricity are power suppliers. Except for temporary connections which the department may authorize by rule for a period not exceeding 14 days without a preconnection inspection, power suppliers may not connect with or energize an electrical installation under this part unless the owner or a licensed electrical contractor has delivered to the power supplier an inspection tag covering the installation, issued by the department of commerce.

History: En. 66-2805.1 by Sec. 273, Ch. 350, L. 1974; amd. Sec. 9, Ch. 504, L. 1977; R.C.M. 1947, 66-2805.1(2); amd. Sec. 1, Ch. 101, L. 1979; amd. Sec. 17, Ch. 352, L. 1985.

50-60-606. Power supplier to deliver inspection tag to department after installation energized. Immediately after an installation has been energized, the power supplier shall deliver to the department of commerce the inspection tag covering the installation.

History: En. 66-2805.1 by Sec. 273, Ch. 350, L. 1974; amd. Sec. 9, Ch. 504, L. 1977; R.C.M. 1947, 66-2805.1(3); amd. Sec. 18, Ch. 352, L. 1985.

50-60-607. Unlawful acts. It is unlawful for a person, partnership, company, firm, association, or corporation other than a power supplier to energize an electrical installation under this part unless an application for an inspection tag covering the installation, together with the inspection fee, has been forwarded to the department of commerce.

History: En. 66-2805.1 by Sec. 273, Ch. 350, L. 1974; amd. Sec. 9, Ch. 504, L. 1977; R.C.M. 1947, 66-2805.1(4); amd. Sec. 19, Ch. 352, L. 1985.

Part 7
Elevators

50-60-701. Inspection of passenger elevators and escalators — fees. (1) All passenger elevators and escalators in public places may be inspected by the department to insure compliance with the requirements of the state building code. The department shall establish and charge a reasonable and uniform fee for the inspections that may not exceed the expense of providing the inspection.

(2) In lieu of inspection by the department, inspections of passenger elevators and escalators to assure compliance with the state building code may be made by:

(a) a maintenance company representative certified by the department who regularly maintains or services the elevator or escalator equipment; or

(b) an insurance company representative certified by the department who regularly inspects an elevator or escalator insured by the company against public liability and who maintains a service record of the elevator or escalator.

(3) When an inspection of a passenger elevator or escalator is made pursuant to subsection (2), a copy of the condition report must be provided to the owner and must be sent to the department. The department may not charge more than $10 for receiving and processing a condition report for each elevator or escalator in any building and for issuing certificates of inspection therefor if the certified maintenance or insurance company inspector doing the inspection certifies to the department that all deficient elevator or escalator conditions noted in the condition report have been corrected and no follow-up by the department in that regard is necessary.

History: En. Sec. 2, Ch. 315, L. 1979; amd. Sec. 1, Ch. 569, L. 1981.

Compiler's Comments

1999 Amendment Void: The amendments to this section made by Ch. 565, L. 1999, were rendered void by sec. 5, Ch. 565, L. 1999, a contingent voidness section, which provided: "[This act] is void if the necessary spending authority and additional 1.5 FTE assumed in the fiscal note are not included in House Bill No. 2." No appropriations were included in House Bill No. 2 for Ch. 565.

50-60-702. Department to adopt inspection standards — certification of inspectors. (1) The department shall adopt standards for passenger elevator and escalator inspections that assure compliance with the requirements of the state building code.

(2) The department shall adopt rules for the certification of maintenance and insurance company inspectors who may inspect passenger elevators and escalators pursuant to 50-60-701.

History: En. Sec. 3, Ch. 315, L. 1979.

Compiler's Comments

1999 Amendment Void: The amendments to this section made by Ch. 565, L. 1999, were rendered void by sec. 5, Ch. 565, L. 1999, a contingent voidness section, which provided: "[This act] is void if the necessary spending authority and additional 1.5 FTE assumed in the fiscal note are not included in House Bill No. 2." No appropriations were included in House Bill No. 2 for Ch. 565.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-60-703. When inspection of elevators not necessary. Elevators that do not carry passengers do not need to be inspected by the department.

History: En. Sec. 4, Ch. 315, L. 1979.

Compiler's Comments

1999 Amendment Void: The amendments to this section made by Ch. 565, L. 1999, were rendered void by sec. 5, Ch. 565, L. 1999, a contingent voidness section, which provided: "[This act] is void if the necessary spending authority and additional 1.5 FTE assumed in the fiscal note are not included in House Bill No. 2." No appropriations were included in House Bill No. 2 for Ch. 565.

Part 8

Residential Energy Efficiency

50-60-801. Statement of policy on residential energy efficiency. The legislature finds that the people of Montana have an interest in energy efficiency in certain residential buildings for the purpose of protecting and improving their economic and environmental well-being and energy security, while recognizing the basic need for safe and affordable shelter. It is the policy of the state of Montana to encourage energy efficiency in residential buildings through strategies that ensure that:

(1) the housing consumer has access to the information required to make informed choices about structures and energy efficiency measures;

(2) energy efficiency measures are safe, reliable, and readily available for use in Montana;

(3) investments in energy efficiency measures are cost-effective;

(4) the cost of energy efficiency measures on the combination of down payments, monthly mortgage payments, and monthly utility bills does not adversely affect the affordability of housing to prospective home buyers and renters; and

(5) energy efficiency measures do not place an undue or inequitable burden on residential building owners or renters, the residential construction industry, financial institutions, real estate salespersons and appraisers, energy providers, or state and local governments.

History: En. Sec. 1, Ch. 383, L. 1993.

50-60-802. Enforcement of energy code through builder self-certification. A person who begins construction on a residential building in Montana after October 1, 1993, shall certify in writing to the building owner at the conclusion of construction that the residential building has been constructed in compliance with the energy-efficient construction standards adopted under the provisions of 50-60-203(1).

History: En. Sec. 4, Ch. 383, L. 1993.

50-60-803. Energy labeling sticker. (1) The department of commerce, in consultation with the department of environmental quality, shall prescribe by rule requirements for a labeling sticker to be affixed to a new residential building that describes the energy efficiency components of the home, including but not limited to heating appliance efficiencies and R-value or U-value of ceilings, walls, floors, windows, and doors in new residential buildings.

(2) A person constructing a new residential building shall affix to that residential building in a manner prescribed by the department of commerce a labeling sticker as described in subsection (1).

History: En. Sec. 5, Ch. 383, L. 1993; amd. Sec. 141, Ch. 418, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

CHAPTER 61

FIRE SAFETY IN PUBLIC BUILDINGS

Part 1 — General Provisions

50-61-101. Purpose of chapter.
50-61-102. Department of justice to administer chapter.
50-61-103. Application of chapter — definitions.
50-61-104. Repealed.
50-61-105. Repealed.
50-61-106. Unlawful to obstruct fire exit.
50-61-107 through 50-61-111. Repealed.
50-61-112. Prior approval required for construction or alteration of educational and institutional occupancies.
50-61-113. Prior approval required for construction of state-owned building designed for human occupancy.
50-61-114. Fire chief and fire inspector to make inspections.
50-61-115. Notice of violations.
50-61-116. Lessee who corrects violations entitled to reimbursement.
50-61-117. Prosecution of violations.
50-61-118. Injunction authorized.
50-61-119. Violation of chapter a misdemeanor.
50-61-120. Exceeding fire code limits for storage of smokeless powder and small arms primers.
50-61-121. Restrictions on storage of smokeless powder and small arms primers.

Part 1
General Provisions

Part Cross-References

Adoption of fire codes by municipalities, 7-5-108, 7-5-4202.

Fire protection in unincorporated towns, Title 7, ch. 33, parts 21 through 23; Title 19, ch. 17, parts 1 through 4.

Municipal power to establish and maintain fire department and alarm system, 7-33-4201, 7-33-4202.

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.

Offense of giving false alarms, 45-7-204.

Fire safety certification requirement for day-care centers, 52-2-734.

50-61-101. Purpose of chapter. The purpose and intent of this chapter are to provide for the public safety in case of fire in those occupancies specified in 50-61-103 and to provide for inspection of the buildings and premises by specified officers.

History: En. Sec. 1, Ch. 279, L. 1947; amd. Sec. 9, Ch. 229, L. 1967; R.C.M. 1947, 69-1801; amd. Sec. 14, Ch. 706, L. 1991.

50-61-102. Department of justice to administer chapter. (1) The department of justice has general charge and supervision of the enforcement of this chapter, and the officers enumerated in 50-61-114 shall act under its general charge and supervision, shall assist the department in giving effect to this chapter, and are subject to its direction and the rules adopted under

50-3-102 and 50-3-103 for the enforcement of 50-61-120 and 50-61-121 and this chapter.

(2) Upon its approval of a fire code and a plan for enforcement of the code filed by a municipality, district, or fire service area, the department may certify a municipal, district, or fire service area fire inspection program for local enforcement.

History: **En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(6); amd. Sec. 5, Ch. 506, L. 1989; amd. Sec. 15, Ch. 706, L. 1991; amd. Sec. 2, Ch. 212, L. 1995.**

Cross-References

State fire prevention and investigation program, Title 50, ch. 3.

50-61-103. Application of chapter — definitions. This chapter applies to the occupancies defined below:

(1) "Assembly occupancy" means the occupancy or use of a building or structure or any portion thereof by a gathering of persons for civic, political, travel, religious, social, or recreational purposes, including among others:

(a) armories;
(b) assembly halls;
(c) auditoriums;
(d) bowling alleys;
(e) broadcasting studios;
(f) chapels;
(g) churches;
(h) club rooms;
(i) dance halls;
(j) exhibition rooms;
(k) gymnasiums;
(l) lecture halls;
(m) lodge rooms;
(n) motion picture theaters;
(o) museums;
(p) night clubs;
(q) opera houses;
(r) passenger stations;
(s) pool rooms;
(t) recreation areas;
(u) restaurants;
(v) skating rinks;
(w) television studios;
(x) theaters; and
(y) taverns.

(2) "Business occupancy" means the occupancy or use of a building or structure or any portion thereof for the transaction of business or the rendering or receiving of professional services, including among others:

(a) banks;
(b) barbershops;
(c) beauty parlors;
(d) office buildings;

(e) radio stations;
(f) telephone exchanges; and
(g) television stations.

(3) "Educational occupancy" means the occupancy or use of a building or structure or any portion thereof by persons assembled for the purpose of learning or receiving educational instruction, including among others:
(a) academies;
(b) colleges;
(c) libraries;
(d) schools; and
(e) universities.

(4) "Industrial occupancy" means the occupancy or use of a building or structure or any portion thereof for assembling, fabricating, finishing, manufacturing, packaging, or processing operations, including among others:
(a) assembly plants;
(b) creameries;
(c) electric substations;
(d) factories;
(e) ice plants;
(f) laboratories;
(g) laundries;
(h) manufacturing plants;
(i) mills;
(j) power plants;
(k) processing plants;
(l) pumping stations;
(m) repair garages;
(n) smokehouses; and
(o) workshops.

(5) "Institutional occupancy" means the occupancy or use of a building or structure or any portion thereof by persons harbored or detained to receive medical, charitable, or other care or treatment or by persons involuntarily detained, including among others:
(a) asylums;
(b) homes for the aged;
(c) hospitals;
(d) houses of correction;
(e) day-care facilities;
(f) infirmaries;
(g) jails;
(h) nurseries;
(i) orphanages;
(j) nursing homes;
(k) penal institutions;
(l) reformatories;
(m) sanitariums;
(n) long-term care facilities; and
(o) boarding homes.

(6) "Residential occupancy" means the occupancy or use of a building or structure or any portion thereof by persons for whom sleeping accommodations are provided and who are not harbored or detained to receive medical, charitable, or other care or treatment or are not involuntarily detained, including among others (but not including single-family private houses):

(a) apartments;
(b) clubhouses;
(c) convents;
(d) dormitories;
(e) dwellings;
(f) hotels;
(g) motels;
(h) multifamily houses; and
(i) lodging houses.

History: En. Sec. 2, Ch. 279, L. 1947; amd. Sec. 10, Ch. 229, L. 1967; amd. Sec. 12, Ch. 187, L. 1977; R.C.M. 1947, 69-1802.

50-61-104. Repealed. Sec. 37, Ch. 706, L. 1991.

History: En. Sec. 3, Ch. 279, L. 1947; amd. Sec. 1, Ch. 159, L. 1949; R.C.M. 1947, 69-1803.

50-61-105. Repealed. Sec. 37, Ch. 706, L. 1991.

History: En. Sec. 4, Ch. 279, L. 1947; R.C.M. 1947, 69-1804.

50-61-106. Unlawful to obstruct fire exit. It is unlawful to obstruct in any manner any fire exit, or any hallway, corridor, or entranceway leading to a fire exit, required by rules adopted by the department of justice.

History: En. Sec. 5, Ch. 279, L. 1947; R.C.M. 1947, 69-1805(part); amd. Sec. 16, Ch. 706, L. 1991.

50-61-107 through 50-61-111. Repealed. Sec. 37, Ch. 706, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

50-61-107. En. Sec. 5, Ch. 279, L. 1947; R.C.M. 1947, 69-1805(part).

50-61-108. En. Sec. 5, Ch. 279, L. 1947; R.C.M. 1947, 69-1805(part).

50-61-109. En. Sec. 6, Ch. 279, L. 1947; R.C.M. 1947, 69-1806(b), (c).

50-61-110. En. Sec. 6, Ch. 279, L. 1947; R.C.M. 1947, 69-1806(a).

50-61-111. En. Sec. 7, Ch. 279, L. 1947; amd. Sec. 1, Ch. 227, L. 1959; amd. Sec. 1, Ch. 254, L. 1975; R.C.M. 1947, 69-1807.

50-61-112. Prior approval required for construction or alteration of educational and institutional occupancies. (1) Within an incorporated municipality, an educational or institutional occupancy, whether public or private, may not be constructed or have alterations made costing $1,500 or more until sketches or architectural plans for the construction or alteration, whichever are available, are submitted to and approved by the state fire prevention and investigation program of the department of justice.

(2) Outside an incorporated municipality, an assembly, educational, or institutional occupancy may not be constructed or have alterations made costing $1,500 or more until a permit has been issued for the construction or alteration by the county commissioners. A fee of $10 must be paid to the county treasurer for each permit. A copy of the permit must be furnished to the department of revenue. A permit may not be issued until sketches or architectural plans for the construction or alteration, whichever are available, are submitted to and approved by the state fire prevention and investigation

program of the department of justice. The state fire prevention and investigation program of the department of justice and county sheriffs are responsible for enforcing the provisions of this subsection.

History: En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(1), (2); amd. Sec. 1, Ch. 706, L. 1991; amd. Sec. 129, Ch. 27, Sp. L. November 1993.

Cross-References

County Commissioners, Title 7, ch. 4, part 21.

County Treasurer, Title 7, ch. 6, part 21.

Assessment procedure, Title 15, ch. 8.

State fire prevention and investigation program, Title 50, ch. 3.

50-61-113. Prior approval required for construction of state-owned building designed for human occupancy. A building designed for human occupancy owned or controlled by the state may not be constructed until plans for the construction have been submitted to and approved by the state fire prevention and investigation program of the department of justice.

History: En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(3); amd. Sec. 1, Ch. 706, L. 1991.

Cross-References

Budget for fire protection of state-owned buildings, 2-17-112.

State fire prevention and investigation program, Title 50, ch. 3.

50-61-114. Fire chief and fire inspector to make inspections. The chief of the fire department of each municipality, district, or fire service area, when a fire inspection program is established, or a fire inspector of the department of justice, when a fire inspection program does not exist, for the purpose of examining the premises for violations of this chapter and rules adopted under 50-3-103 for the enforcement of this chapter:

(1) shall enter into school buildings at least once each 12 months; and

(2) may enter into all other buildings and upon all other premises within the jurisdiction, according to priority schedules established by the department for conducting inspections of buildings and premises.

History: En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(4); amd. Sec. 1, Ch. 323, L. 1985; amd. Sec. 17, Ch. 706, L. 1991; amd. Sec. 3, Ch. 212, L. 1995.

Cross-References

Structures creating fire hazard a public nuisance, 50-62-102.

50-61-115. Notice of violations. (1) When a building is found that is not in compliance with fire safety rules promulgated by the department of justice, the person making the inspection or the department shall serve a written notice upon the party whose duty it is to maintain the safety of the building.

(2) The notice must specify the time within which the defective conditions must be remedied, which may not be more than 90 days.

(3) The notice is served if delivered to the person to be notified, if left with any adult person at the usual residence or place of business of the person to be notified, or if deposited in the post office directed to the last-known address of the person to be notified. Whenever buildings are managed and controlled by a board of trustees, board of commissioners, or other governing body, the notice is served if delivered to the president, secretary, or treasurer of the board of trustees, board of commissioners, or other governing body.

History: **En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(part); amd. Sec. 18, Ch. 706, L. 1991.**

Cross-References

Structures creating fire hazard a public nuisance, 50-62-102.

50-61-116. Lessee who corrects violations entitled to reimbursement. The occupant or lessee of any building who is required to erect fire escapes under the provisions of this chapter is entitled to reimburse himself for the cost and expense of erecting the fire escapes out of the rent or lease money of the premises, and the reimbursement is not a breach of any existing lease, contract, or covenant thereof or grounds for any action or damage ouster.

History: **En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(part).**

Cross-References

Structures creating fire hazard a public nuisance, 50-62-102.

The Montana Residential Landlord and Tenant Act of 1977, Title 70, ch. 24.

50-61-117. Prosecution of violations. It is the duty of the department of justice or other authorized officer to furnish the county attorney with all evidence of violations of rules adopted by the department within the county where said violations occur, and, if the evidence discloses the fact that a violation has occurred, it is the duty of the county attorney of the county to prosecute the person committing the violation in the same manner as in other cases.

History: **En. Sec. 10, Ch. 279, L. 1947; R.C.M. 1947, 69-1809(part); amd. Sec. 19, Ch. 706, L. 1991.**

50-61-118. Injunction authorized. In addition to the other remedies and penalties provided in this chapter, upon the failure of any of the parties charged with the duty to maintain the safety of the building premises in accordance with rules adopted by the department of justice, the attorney general of the state or the county attorney of the county where the building is located shall bring an action against the owner, lessee, and occupants of the building for an injunction enjoining the further occupancy of it until it is in compliance with this chapter. The action may be brought in the county where the building is located.

History: **En. Sec. 11, Ch. 279, L. 1947; R.C.M. 1947, 69-1810; amd. Sec. 20, Ch. 37, L. 1979; amd. Sec. 20, Ch. 706, L. 1991.**

Cross-References

Injunctions, Title 27, ch. 19.

50-61-119. Violation of chapter a misdemeanor. (1) Any person failing, neglecting, or refusing to comply with any of the provisions of this chapter shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than $50.

(2) Each day's failure to comply with any of the provisions of this chapter, after the expiration of the time stipulated in the written notice provided for herein, shall constitute a separate offense.

History: **En. Sec. 10, Ch. 279, L. 1947; R.C.M. 1947, 69-1809(part).**

50-61-120. Exceeding fire code limits for storage of smokeless powder and small arms primers. (1) A retail establishment may exceed the limits prescribed by an adopted fire or safety code or a local government ordinance or resolution for the storage of smokeless powder and small arms primers if the storage conforms to the provisions contained in 50-61-121.

(2) Nothing in this section may be construed to allow repackaging of smokeless powder from larger to smaller containers on the retail premises.

History: En. Sec. 1, Ch. 506, L. 1989.

Cross-References

Regulation of explosives and inflammable materials, 7-33-4205.

Powers and duties of Department of Justice, 50-3-102.

50-61-121. Restrictions on storage of smokeless powder and small arms primers. (1) A retail establishment may stock up to 400 pounds of smokeless powder on the premises of a building with a sprinkler system or 200 pounds on the premises of a building without a sprinkler system if storage of this stock conforms to the following conditions:

(a) no more than 20 pounds are on display in a customer service area;

(b) the storage area is clearly posted as off limits to customers;

(c) the storage area is clearly posted prohibiting smoking or any open flame or sparks; and

(d) the storage area is a room designed and constructed to restrict smoke travel that is separate from the customer service area, that has a self-closing entrance door, and that conforms to one of the following:

(i) It is constructed of material sufficient to achieve a 1-hour fire resistant-rated barrier between the storage area and the customer service area. The smokeless powder must be stored in cabinets made of wood or equivalent material that is at least 1 inch thick, and each cabinet must contain no more than 200 pounds of smokeless powder. Cabinets must be separated by 25 feet.

(ii) It is protected by a fire suppression sprinkler system approved by the state fire prevention and investigation program of the department of justice or a fire marshal of the local jurisdiction, and the storage area has cabinets as provided for in subsection (1)(d)(i).

(iii) Smokeless powder stock is contained in a cabinet with casters and constructed of wood at least 1 inch thick that is covered on all sides with 5/8-inch sheetrock.

(2) A retail establishment may stock up to 250,000 small arms primers if storage of this stock conforms to the following conditions:

(a) no more than 20,000 primers in a building with a sprinkler system or 10,000 primers in a building without a sprinkler system are on display in a customer service area;

(b) the storage area must conform to the conditions imposed in subsections (1)(a) through (1)(d), except that no more than 125,000 small arms primers may be stored in one cabinet, and the minimum required separation between cabinets is 15 feet; and

(c) small arms primers are retained in packaging approved by the U.S. department of transportation.

History: En. Sec. 2, Ch. 506, L. 1989; amd. Sec. 21, Ch. 706, L. 1991.

Cross-References

Regulation of explosives and inflammable materials, 7-33-4205.

Powers and duties of Department of Justice, 50-3-102.

CHAPTER 62

FIRE HAZARDS

Part 1 — Removal of Hazards

50-62-101. Entering of buildings for purpose of examination authorized.
50-62-102. Structures or conditions creating fire hazard a public nuisance — order to remedy.
50-62-103. Service of order to repair hazardous condition or demolish structure.
50-62-104. Answer of owner or occupant.
50-62-105. Default judgment.
50-62-106. Hearing and judgment.
50-62-107. Proceedings on failure to comply with order.
50-62-108. Repealed.
50-62-109. Repealed.
50-62-110. Appeal to department of justice.
50-62-111. Penalty for failure to comply with order to correct.
50-62-112. Notice of violations.

Part 1

Removal of Hazards

Part Cross-References

Fire protection in unincorporated towns, Title 7, ch. 33, parts 21 through 23.

Municipal power to establish and maintain fire department and alarm system, 7-33-4201, 7-33-4202.

Municipal power to inspect and regulate certain fire hazards, explosives, and other inflammable materials, 7-33-4204, 7-33-4205.

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.

Offense of giving false alarms, 45-7-204.

Criminal offense to maintain public nuisance, 45-8-111.

State fire prevention and investigation program, Title 50, ch. 3, part 1.

Fire hazards in oil and gas operations, 82-11-302.

50-62-101. Entering of buildings for purpose of examination authorized. The officers of the state fire prevention and investigation program of the department of justice or the chief of the fire department of each municipality or district where a fire department is established at all reasonable hours may, as authorized by law, enter into all buildings and upon all premises within his jurisdiction for the purpose of determining whether the building or premise conforms to laws and rules relating to fire hazards and fire safety.

History: En. Sec. 15, Ch. 148, L. 1911; re-en. Sec. 2752, R.C.M. 1921; re-en. Sec. 2752, R.C.M. 1935; amd. Sec. 8, Ch. 229, L. 1967; R.C.M. 1947, 82-1218; amd. Sec. 22, Ch. 706, L. 1991.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-62-102. Structures or conditions creating fire hazard a public nuisance — order to remedy. (1) If any building or other structure that for want of proper repair; by reason of age, dilapidated condition, defective or poorly installed wiring and equipment, defective chimneys, defective gas connections, defective heating apparatus, or the existence of any combustible materials, flammable conditions, or other fire hazards; or for any other cause or reason is especially liable to fire and is dangerous to the safety of the building premises or to the public or is so situated as to endanger other buildings and property in the vicinity, the state fire prevention and investigation program of the department of justice or other officer may declare the building or other structure to be a public nuisance and proceed according to 50-62-103 or subsection (2) of this section.

(2) If the state fire prevention and investigation program, an officer of the program, or an officer mentioned in 50-62-101 determines that a building or other structure constitutes a public nuisance for any reason identified in subsection (1), the department or other officer shall order the hazardous condition or material to be removed or remedied. The order must be in writing and directed generally to the owner, lessee, agent, or occupant of the building or structure.

(3) If the hazardous condition or material can be removed or remedied within a period of 24 hours, the order must contain notice that the condition or material must be remedied or removed. The owner, lessee, agent, or occupant upon whom the notice is served who fails to comply with the notice is liable for any expenses incurred in the removal or remedying of the hazardous condition or material by the fire prevention and investigation program or other officer mentioned in 50-62-101.

History: En. Sec. 16, Ch. 148, L. 1911; amd. Sec. 2, Ch. 95, L. 1913; amd. Sec. 2, Ch. 212, L. 1919; re-en. Sec. 2753, R.C.M. 1921; amd. Sec. 1, Ch. 139, L. 1929; re-en. Sec. 2753, R.C.M. 1935; R.C.M. 1947, 82-1219(part); amd. Sec. 23, Ch. 706, L. 1991.

Cross-References

Application of Montana Rules of Civil Procedure to abatement proceedings, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Nuisances, Title 27, ch. 30.

50-62-103. Service of order to repair hazardous condition or demolish structure. (1) If the fire prevention and investigation program of the department of justice or any officer mentioned in 50-62-101, upon an examination or inspection, determines that a building or other structure constitutes a public nuisance for any reason identified in 50-62-102 and the condition cannot be removed or remedied within 24 hours, the program or officer shall order the hazardous condition to be repaired or the structure to be torn down or demolished and all dangerous conditions remedied.

(2) The order shall be in writing, shall recite the grounds therefor, and shall be filed in the office of the clerk of the district court of the county in which the building or structure ordered to be altered, repaired, or demolished is situated, and thereupon all further proceedings for the enforcement thereof shall be had in that court.

(3) A copy of the order filed as aforesaid, together with a written notice that it has been filed and will be put in force unless the owner, occupant, or tenant shall file with the clerk of the court his objections or answer thereto within the time specified in 50-62-104, shall be served upon the owner and any purchaser under contract for deed of the building or structure directed to be altered, repaired, or demolished. If there is a tenant occupying the building, service shall also be made upon him. Service shall be made upon the owner and occupant, if there is one, personally either within or without the state.

(4) If the whereabouts of the owner or any purchaser under contract for deed is unknown and cannot be ascertained by the department of justice by the

exercise of reasonable diligence, then upon filing in the office of the clerk of the district court an affidavit to this effect, service of the notice upon the owner or any purchaser under contract for deed may be made by the clerk of the district court by publication of it once in each week for 3 successive weeks in a newspaper printed and published in the county in which the building or structure is located and by posting a copy thereof in a conspicuous place upon the building or structure, and the service so made is complete upon the expiration of the publication period. Proof of service of the notice shall be filed in the office of the clerk of the district court within 5 days after the service thereof.

History: En. Sec. 16, Ch. 148, L. 1911; amd. Sec. 2, Ch. 95, L. 1913; amd. Sec. 2, Ch. 212, L. 1919; re-en. Sec. 2753, R.C.M. 1921; amd. Sec. 1, Ch. 139, L. 1929; re-en. Sec. 2753, R.C.M. 1935; R.C.M. 1947, 82-1219(part); amd. Sec. 21, Ch. 37, L. 1979; amd. Sec. 16, Ch. 526, L. 1983; amd. Sec. 24, Ch. 706, L. 1991.

Cross-References

Application of Montana Rules of Civil Procedure to abatement proceedings, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

50-62-104. Answer of owner or occupant. (1) The owner of any building so condemned or any occupant or lessee upon whom such notice or order shall be served, within 20 days from the date of such service, may file with the clerk of the district court and serve upon the department of justice or any officer mentioned in 50-62-101 written objections to said order in the form of a verified answer denying the existence of any of the facts therein cited which he desires to controvert.

(2) If an answer be filed and served, the court shall hear and determine the issues so raised and give judgment thereon.

History: En. Sec. 2753-A, Ch. 139, L. 1929; re-en. Sec. 2753.1, R.C.M. 1935; R.C.M. 1947, 82-1220(part); amd. Sec. 25, Ch. 706, L. 1991.

Cross-References

State fire prevention and investigation program, Title 50, ch. 3.

50-62-105. Default judgment. If no answer is so filed and served, the owner and all other persons in interest shall be deemed to be in default, and thereupon the court shall affirm the order of condemnation and direct the department of justice or other officer to proceed with the enforcement thereof.

History: En. Sec. 2753-A, Ch. 139, L. 1929; re-en. Sec. 2753.1, R.C.M. 1935; R.C.M. 1947, 82-1220(part); amd. Sec. 26, Ch. 706, L. 1991.

50-62-106. Hearing and judgment. (1) The court, upon application of the department of justice or any officer mentioned in 50-62-101, shall make its order fixing a time and place for such hearing, which time shall be within 20 days from the date of the filing of the answer or as soon thereafter as the matter may be heard.

(2) If upon trial the order shall be sustained, judgment shall be given accordingly and a time shall be fixed within which the building or structure shall be altered, destroyed, or repaired in compliance with such order, but otherwise the court shall annul or set aside the order of condemnation.

History: En. Sec. 2753-B, Ch. 139, L. 1929; re-en. Sec. 2753.2, R.C.M. 1935; R.C.M. 1947, 82-1221; amd. Sec. 27, Ch. 706, L. 1991.

50-62-107. Proceedings on failure to comply with order. (1) If the owner or other party in interest shall fail to comply with the order of condemnation of a building or structure within the time fixed by the court in case a trial is had therein, then the department of justice or any other officer authorized in 50-62-101 may proceed to cause such building or structure to be altered, repaired, or demolished in accordance with the directions contained in such order.

(2) Where a building or structure is demolished in accordance with such order, the department or any other officer authorized in 50-62-101 may sell or dispose of the salvaged materials therefrom at public auction upon 5 days' posted notice. The department or other officer shall keep an accurate account of the expenses incurred in carrying out the order and shall credit thereon the proceeds of such salvage sale, if any, and shall report thereon with a statement of said expenses or the balance thereof, the expense incurred, and the amount, if any, received from such salvage sale to the court for approval and allowance. The court shall examine, correct if necessary, and allow said expense account, and said amount so allowed shall constitute a lien against the real estate on which said building or structure is or was situated. If the amount thereof is not paid by the owner or other party in interest within 3 months after the account has been examined and approved by the court, the real estate upon which said building or structure is or was situated shall be sold under proper order of court by the sheriff of the county in which the same is situated in the manner provided by law for the sale of real estate upon execution, and the proceeds of said sale shall be paid into the treasury of the governmental unit which incurred the expenses. If the amount received as salvage or on sale shall exceed the expense incurred by the governmental unit, the court shall direct the payment of the surplus to those parties with encumbrances, mortgages, or liens on the real estate in order of their priority and any surplus thereafter to the owner or the payment of the same into court for their use and benefit.

History: En. Sec. 2753-C, Ch. 139, L. 1929; re-en. Sec. 2753.3, R.C.M. 1935; amd. Sec. 1, Ch. 418, L. 1975; R.C.M. 1947, 82-1222; amd. Sec. 1, Ch. 278, L. 1981; amd. Sec. 28, Ch. 706, L. 1991.

Cross-References

Mortgages, Title 71, ch. 1.

Liens, Title 71, ch. 3.

50-62-108. Repealed. Sec. 37, Ch. 706, L. 1991.

History: En. Sec. 2753-D, Ch. 139, L. 1929; re-en. Sec. 2753.4, R.C.M. 1935; amd. Sec. 1, Ch. 187, L. 1947; R.C.M. 1947, 82-1223(part); amd. Sec. 6, Ch. 506, L. 1989.

50-62-109. Repealed. Sec. 37, Ch. 706, L. 1991.

History: En. Sec. 2753-D, Ch. 139, L. 1929; re-en. Sec. 2753.4, R.C.M. 1935; amd. Sec. 1, Ch. 187, L. 1947; R.C.M. 1947, 82-1223(part).

50-62-110. Appeal to department of justice. If the owner or occupant deems himself aggrieved by an order of an officer under this chapter, he may appeal to the department of justice within 24 hours and the cause of the complaint shall at once be investigated by direction of the department. Unless such order is revoked by the department, it shall remain in force and forthwith be complied with by such owner or occupant.

History: En. Sec. 17, Ch. 148, L. 1911; re-en. Sec. 2754, R.C.M. 1921; re-en. Sec. 2754, R.C.M. 1935; R.C.M. 1947, 82-1224; amd. Sec. 29, Ch. 706, L. 1991.

Cross-References

State fire prevention and investigation program, Title 50, ch. 3.

50-62-111. Penalty for failure to comply with order to correct. An owner or occupant of buildings or premises who fails to comply with the orders of the authorities named in this chapter shall be guilty of a misdemeanor and shall be fined not less than $10 or more than $500 for each day's neglect.

History: En. Sec. 18, Ch. 148, L. 1911; re-en. Sec. 2755, R.C.M. 1921; re-en. Sec. 2755, R.C.M. 1935; R.C.M. 1947, 82-1225; amd. Sec. 30, Ch. 706, L. 1991.

50-62-112. Notice of violations. (1) When the storage of class I or class II liquids, as defined in the uniform fire code, in a tank on a farm or ranch is not in compliance with rules promulgated by the department of justice, the person making the inspection or the department shall serve a written warning notice upon the owner or operator of the tank.

(2) The notice must specify the violations found and the time within which the violations must be corrected. A penalty may not be imposed if the violation is corrected within the time period allowed.

History: En. Sec. 2, Ch. 201, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Department of Justice to adopt fire code as rules, 50-3-102, 50-3-103.

Rules regarding storage of class I or class II liquids on farms and ranches, 50-3-103.

CHAPTER 63

INVESTIGATION OF FIRES

Part 1 — General Provisions

50-63-101. Examination of premises where fire occurred authorized.
50-63-102. Penalty for setting or leaving fire causing damage.
50-63-103. Liability of offender for damages and costs.

Part 2 — Initial Investigation

50-63-201. Cause of fire to be investigated.
50-63-202. Fire chief or sheriff to conduct investigation.
50-63-203. Reports to be filed with department of justice.
50-63-204. Penalty for failure to investigate or file report.

Part 3 — Investigation by Fire Marshal (Repealed. Sec. 37, Ch. 706, L. 1991)

Part 4 — Information From Insurers

50-63-401. Insurer to provide information regarding fire loss to certain agencies upon request.
50-63-402. Insurer to report suspicious fires.
50-63-403. Agencies to keep information confidential.
50-63-404. Testimony of agency personnel in action to recover under insurance policy.
50-63-405. Exemption of insurer from liability.

Chapter Cross-References

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.

Offense of giving false alarms, 45-7-204.

Part 1
General Provisions

50-63-101. Examination of premises where fire occurred authorized. In the performance of the duties imposed by the provisions of this chapter, officers of the department of justice may, as authorized by law, enter upon and examine any building or premises where a fire has occurred and other buildings and premises adjoining or near thereto.

History: En. Sec. 14, Ch. 148, L. 1911; re-en. Sec. 2751, R.C.M. 1921; re-en. Sec. 2751, R.C.M. 1935; R.C.M. 1947, 82-1217; amd. Sec. 31, Ch. 706, L. 1991.

Cross-References

State fire prevention and investigation program, Title 50, ch. 3.

50-63-102. Penalty for setting or leaving fire causing damage. (1) Any person who shall upon any land within this state set or leave any fire that shall spread and damage or destroy property of any kind not his own shall upon conviction be punished by a fine of not less than $10 or more than $500. If such fire be set maliciously, whether on his own or on another's land, with intent to destroy property not his own, he shall be guilty of a felony and shall be punished by imprisonment in the state penitentiary for not less than 1 or more than 50 years.

(2) During the closed season, any person who shall kindle a campfire on land not his own in or dangerously near any forest material and leave same unquenched or who shall be a party thereto or who shall by throwing away any lighted cigar, cigarette, matches, or by the use of firearms or in any other manner start a fire in forest material not his own and leave same unquenched shall, upon conviction, be fined not less than $10 or more than $100 or be imprisoned in the county jail not exceeding 60 days.

History: En. Sec. 4, Ch. 170, L. 1919; re-en. Sec. 2766, R.C.M. 1921; re-en. Sec. 2766, R.C.M. 1935; R.C.M. 1947, 82-1236.

Cross-References

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.

Offense of giving false alarms, 45-7-204.

Failure to extinguish campfires on forest lands, 76-13-123.

Throwing lighted materials on forest lands, 76-13-124.

50-63-103. Liability of offender for damages and costs. Any person who shall upon any land within this state, whether on his own or on another's land, set or leave any fire that shall spread and damage or destroy property of any kind not his own shall be liable for all damages caused thereby, and any owner of property damaged or destroyed by such fire may maintain a civil suit for the purpose of recovering such damages. Any person who shall upon any land within this state, whether on his own or on another's land, set or leave any fire which threatens to spread and damage or destroy property shall be liable for all costs and expenses incurred by the state of Montana, by any forestry association, or by any person extinguishing or preventing the spread of such fire.

History: En. Sec. 7, Ch. 170, L. 1919; re-en. Sec. 2769, R.C.M. 1921; re-en. Sec. 2769, R.C.M. 1935; R.C.M. 1947, 82-1237.

Cross-References

Failure to extinguish campfires on forest lands, 76-13-123.

Throwing lighted materials on forest lands, 76-13-124.

Part 2
Initial Investigation

50-63-201. Cause of fire to be investigated. The cause, origin, and circumstances of each fire by which property has been destroyed or damaged shall be investigated to determine the exact cause and circumstances. The department of justice may superintend and direct the investigation.

History: En. Sec. 6, Ch. 148, L. 1911; re-en. Sec. 2743, R.C.M. 1921; re-en. Sec. 2743, R.C.M. 1935; amd. Sec. 6, Ch. 229, L. 1967; amd. Sec. 1, Ch. 351, L. 1973; R.C.M. 1947, 82-1209(1); amd. Sec. 32, Ch. 706, L. 1991.

Cross-References

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.

State fire prevention and investigation program, Title 50, ch. 3.

50-63-202. Fire chief or sheriff to conduct investigation. If the fire occurs within a municipality, organized fire district, or fire service area, the chief of the fire department shall make the investigation. If the fire occurs outside a municipality, organized fire district, or fire service area, the county sheriff shall make the investigation.

History: En. Sec. 6, Ch. 148, L. 1911; re-en. Sec. 2743, R.C.M. 1921; re-en. Sec. 2743, R.C.M. 1935; amd. Sec. 6, Ch. 229, L. 1967; amd. Sec. 1, Ch. 351, L. 1973; R.C.M. 1947, 82-1209(part); amd. Sec. 4, Ch. 212, L. 1995.

50-63-203. Reports to be filed with department of justice. (1) If it appears that the fire was of suspicious origin, if there was a loss of human life, or if it is determined that a criminal investigation is necessary, the official responsible for the investigation shall notify the department of justice and the appropriate law enforcement agency within 24 hours and shall file a written report of the cause with the department within 10 days.

(2) If the property was insured, as soon as any adjustment has been made, a person representing the insurance company shall notify the department of the amount of adjustment and the apparent cause and circumstances of the fire on forms furnished by the department.

(3) Each official responsible for investigating fires shall file a fire incident report on each fire with the department. Reports shall be on forms and shall contain information prescribed by the department. These reports shall be sent to the department on a monthly basis or at intervals determined necessary by the department.

History: En. Sec. 6, Ch. 148, L. 1911; re-en. Sec. 2743, R.C.M. 1921; re-en. Sec. 2743, R.C.M. 1935; amd. Sec. 6, Ch. 229, L. 1967; amd. Sec. 1, Ch. 351, L. 1973; R.C.M. 1947, 82-1209(part); amd. Sec. 33, Ch. 706, L. 1991.

50-63-204. Penalty for failure to investigate or file report. Any person who fails to comply with the requirements of this part shall be fined not less than $25 or more than $200.

History: En. Sec. 8, Ch. 148, L. 1911; re-en. Sec. 2745, R.C.M. 1921; re-en. Sec. 2745, R.C.M. 1935; amd. Sec. 7, Ch. 229, L. 1967; R.C.M. 1947, 82-1211.

Part 3
Investigation by Fire Marshal
(Repealed. Sec. 37, Ch. 706, L. 1991)

Part Compiler's Comments

Histories of Repealed Sections:

50-63-301. (1)En. Sec. 9, Ch. 148, L. 1911; re-en. Sec. 2746, R.C.M. 1921; re-en. Sec. 2746, R.C.M. 1935; Sec. 82-1212, R.C.M. 1947; (2)En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; Sec. 82-1215, R.C.M. 1947; R.C.M. 1947, 82-1212, 82-1215(part).

50-63-302. En. Sec. 13, Ch. 148, L. 1911; re-en. Sec. 2750, R.C.M. 1921; re-en. Sec. 2750, R.C.M. 1935; R.C.M. 1947, 82-1216.

50-63-303. (1)En. Sec. 11, Ch. 148, L. 1911; re-en. Sec. 2748, R.C.M. 1921; re-en. 2748, R.C.M. 1935; Sec. 82-1214, R.C.M. 1947; (2)En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; Sec. 82-1215, R.C.M. 1947; R.C.M. 1947, 82-1214, 82-1215(part).

50-63-304. En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; R.C.M. 1947, 82-1215(part).

50-63-305. En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; R.C.M. 1947, 82-1215(part); amd. Sec. 9, Ch. 140, L. 1985.

50-63-306. En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; R.C.M. 1947, 82-1215(part).

50-63-307. En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; R.C.M. 1947, 82-1215(part).

50-63-308. (1)En. Sec. 10, Ch. 148, L. 1911; re-en. Sec. 2747, R.C.M. 1921; re-en. Sec. 2747, R.C.M. 1935; Sec. 82-1213, R.C.M. 1947; (2)En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; Sec. 82-1215, R.C.M. 1947; R.C.M. 1947, 82-1213, 82-1215(part).

Part 4
Information From Insurers

Part Cross-References

Insurance and Insurance Companies, Title 33.

Property insurance, Title 33, ch. 24.

50-63-401. Insurer to provide information regarding fire loss to certain agencies upon request. Each insurer engaged in issuing fire insurance policies in the state of Montana shall upon written request of any appropriate law enforcement or fire protection agency release to the requesting agency all information in its possession relating to a fire loss of real or personal property. The information may include but is not limited to:

(1) any insurance policy relevant to the fire loss under investigation and any application for such a policy;

(2) premium payment records;

(3) the history of previous claims made by the insured for fire loss;

(4) material relating to the investigation of the loss, including statements of any person, proof of loss, and other relevant evidence.

History: En. Sec. 1, Ch. 145, L. 1979.

50-63-402. Insurer to report suspicious fires. Whenever an insurer has reason to believe that a fire loss in which it has an interest may be of other than accidental cause, it shall notify an appropriate law enforcement or fire protection agency and provide such agency with all material developed from its inquiry into the fire loss.

History: En. Sec. 2, Ch. 145, L. 1979.

Cross-References

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.

50-63-403. Agencies to keep information confidential. The insured's right of individual privacy requires agencies and agency personnel receiving information furnished pursuant to 50-63-401 and 50-63-402 to hold the information in confidence unless:

(1) the insured waives his right of individual privacy; or

(2) release of the information is required pursuant to a criminal or civil proceeding.

History: En. Sec. 3, Ch. 145, L. 1979.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.

50-63-404. Testimony of agency personnel in action to recover under insurance policy. Law enforcement and fire protection agency personnel may be required to testify as to any information in their possession regarding the fire loss of real or personal property in any civil action in which a person seeks recovery from an insurer under a policy for the fire loss.

History: En. Sec. 4, Ch. 145, L. 1979.

Cross-References

Subpoenas and witnesses, Title 26, ch. 2.

50-63-405. Exemption of insurer from liability. In the absence of fraud or bad faith, the insurer or person who furnished information on its behalf is not subject to liability in any civil action for:

(1) furnishing information as required by 50-63-401; or

(2) notifying an appropriate agency of a fire loss as required by 50-63-402.

History: En. Sec. 5, Ch. 145, L. 1979.

Cross-References

Liability, Title 27, ch. 1, part 7.

False reports to law enforcement authorities, 45-7-205.

CHAPTER 64

ASBESTOS REGULATION IN BUILDING CONSTRUCTION AND DEMOLITION

Part 1 — General Provisions

50-64-101. Purpose.
50-64-102. Definitions.
50-64-103. Rulemaking authorized.
50-64-104. Safeguards to follow during demolition.
50-64-105. Use of asbestos-containing spray products prohibited.
50-64-106. Use of fibrated product or compound — supervisory personnel required.
50-64-107. Violations — penalties.

Chapter Cross-References

Occupational Disease Act of Montana, Title 39, ch. 72.

Part 1
General Provisions

Part Cross-References

Asbestos Control Act, Title 75, ch. 2, part 5.

50-64-101. Purpose. The purpose of this chapter is to protect the citizens of Montana from the dangers precipitated by the use of spray materials containing mineral fibers. The legislature finds that if adequate safety precautions are not taken during the spray application of these materials, spraying operations may release a significant quantity of particulate matter into the ambient air. Likewise, the legislature finds the continued unregulated use of sprayed asbestos insulation and the destruction of structures containing asbestos insulation represent a significant threat to the health of workers placed in contact with these fibers and to the health of the community as a whole.

History: En. 69-7401 by Sec. 1, Ch. 570, L. 1977; R.C.M. 1947, 69-7401.

50-64-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of commerce.

(2) "Fibrated product" means a substance used in construction for whatever purpose which contains asbestos fibers which tend to disperse into ambient air during application or upon destruction or removal.

(3) "Person" means an individual, firm, corporation, partnership, association, or other legal entity.

History: En. 69-7402 by Sec. 2, Ch. 570, L. 1977; R.C.M. 1947, 69-7402; amd. Sec. 20, Ch. 352, L. 1985.

50-64-103. Rulemaking authorized. The department is granted authority to promulgate rules necessary to accomplish the purposes of this chapter.

History: En. 69-7406 by Sec. 6, Ch. 570, L. 1977; R.C.M. 1947, 69-7406.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-64-104. Safeguards to follow during demolition. The building or structure to be demolished which contains asbestos insulation or fireproofing must follow the following safeguards:

(1) Whenever possible, the local fire department shall be notified of the demolition.

(2) Signs must be posted in conspicuous locations around the building or structure being demolished warning persons to take proper precautions against exposure to asbestos fibers before entering the area.

(3) Boilers, pipes, and steel members insulated or fireproofed with asbestos must be wetted before toppling of the wall begins. This mandatory procedure applies, where practicable, to all asbestos-lined surfaces.

(4) When demolition by toppling is performed, a reasonable enclosure for dust emission control must be constructed.

(5) Adequate wetting to suppress dust must be performed before and during the demolition or toppling.

(6) Asbestos-containing debris may not be dropped or thrown from any floor and must be transported by dust-tight chutes or buckets, with the chutes or buckets sufficiently wetted to prevent dust.

(7) During transportation of the debris, it must be thoroughly wetted before loading and must be enclosed or covered during its transport to prevent dust dispersion.

(8) The asbestos-containing debris must be deposited at a sanitary landfill at which it is unlikely to be disturbed, and signs must be posted around the landfill warning that asbestos-containing debris is buried there.

History: En. 69-7403 by Sec. 3, Ch. 570, L. 1977; R.C.M. 1947, 69-7403.

50-64-105. Use of asbestos-containing spray products prohibited. The use of asbestos-containing spray products, for whatever purpose, in the construction of a building or structure is prohibited.

History: En. 69-7404 by Sec. 4, Ch. 570, L. 1977; R.C.M. 1947, 69-7404.

50-64-106. Use of fibrated product or compound — supervisory personnel required. Whenever a fibrated product or compound is applied to a surface utilizing a spray or pneumatic means of application, one person must be assigned supervisory authority for all aspects of the operation.

History: En. 69-7405 by Sec. 5, Ch. 570, L. 1977; R.C.M. 1947, 69-7405.

50-64-107. Violations — penalties. (1) A person who violates any provision of this chapter commits a misdemeanor.

(2) A person convicted of violating this chapter shall be fined no more than $1,000 or be imprisoned in the county jail for a term not to exceed 60 days, or both.

(3) Each separate occurrence in violation of this chapter is a separate offense.

History: En. 69-7407 by Sec. 7, Ch. 570, L. 1977; R.C.M. 1947, 69-7407.

CHAPTERS 65 THROUGH 69

RESERVED

CHAPTER 70

OCCUPATIONAL HEALTH

Part 1 — General Provisions

50-70-101. Short title.
50-70-102. Declaration of policy and purpose.
50-70-103. Definitions.
50-70-104. Administration.
50-70-105. Authority of department — rules.
50-70-106. Repealed.
50-70-107. Duty of physicians and others to report occupational disease.

50-70-108. Application for federal aid.
50-70-109. Confidentiality of records.
50-70-110. Repealed.
50-70-111. Hearings.
50-70-112. Permits.
50-70-113. Emissions prohibited.
50-70-114. Variances.
50-70-115. Inspection.
50-70-116. Enforcement.
50-70-117. Emergency procedure.
50-70-118. Penalty.

Part 1
General Provisions

Part Cross-References

Workers' compensation, Title 39, ch. 71.

Occupational Disease Act of Montana, Title 39, ch. 72.

Silicosis benefits, Title 39, ch. 73.

50-70-101. Short title. This chapter shall be known and may be cited as the "Occupational Health Act of Montana".

History: En. Sec. 1, Ch. 316, L. 1971; R.C.M. 1947, 69-4206.

50-70-102. Declaration of policy and purpose. (1) It is hereby declared to be the public policy of this state and the purpose of this chapter to achieve and maintain such conditions at the workplace as will protect human health and safety and, to the greatest degree practicable, foster the comfort and convenience of the workers at any workplace of this state and enhance their productivity and well-being.

(2) To these ends it is the purpose of this chapter to provide for a coordinated statewide program of abatement and control of occupational diseases, for an appropriate distribution of responsibilities among the state and local units of government, and for a framework within which all values may be balanced in the public interest.

History: En. Sec. 2, Ch. 316, L. 1971; R.C.M. 1947, 69-4207.

50-70-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Air contaminant" means fumes, dust, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Emission" means a release into the work space atmosphere of air contaminants or pollutants.

(4) "Occupational disease" means an illness, impairment, or disability that:

(a) arises from the person's employment;

(b) is caused by exposure to a substance or industrial practice that is hazardous to health;

(c) has symptoms of an industrial disease that is known to have resulted from the same type of exposure in other cases;

(d) is not the result of a person's contact or activities outside the person's employment.

(5) "Occupational health" is a field of specialization concerned with the problems of health maintenance, productivity, and well-being of industrial workers that are related to and affected by the conditions of work and by the stress of the industrial environment.

(6) "Person" means an individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate, or any other legal entity.

(7) "Pollutant" means air contaminants, heat, noise, vibration, ionizing radiation, and nonionizing radiation.

(8) "Sanitary facilities" means toilets, showers, dressing rooms, lunchrooms, sewage disposal systems, and potable water systems.

(9) "Threshold limit values" means airborne concentrations of substances that, it is believed, nearly all workers may be repeatedly exposed to day after day without adverse effect.

(10) "Worker" is a person gainfully employed at any place.

(11) "Workplace" is a place or location where a person is gainfully employed.

History: En. Sec. 3, Ch. 316, L. 1971; amd. Sec. 35, Ch. 349, L. 1974; R.C.M. 1947, 69-4208; amd. Sec. 142, Ch. 418, L. 1995; amd. Sec. 320, Ch. 546, L. 1995; amd. Sec. 1, Ch. 25, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 25 deleted definition of board that read: ""Board" means the board of environmental review provided for in 2-15-3502"; in definition of department substituted "labor and industry" for "environmental quality" and substituted "2-15-1701" for "2-15-3501"; and made minor changes in style. Amendment effective July 1, 1999.

50-70-104. Administration. Except as otherwise provided, the department is responsible for administration of this chapter.

History: En. Sec. 4, Ch. 316, L. 1971; amd. Sec. 36, Ch. 349, L. 1974; R.C.M. 1947, 69-4209.

50-70-105. Authority of department — rules. The department may:

(1) enforce orders by appropriate administrative and judicial proceedings;

(2) secure necessary scientific, technical, administrative, and operational service by contract or otherwise;

(3) prepare and develop a comprehensive plan for the prevention, abatement, and control of occupational disease;

(4) encourage voluntary cooperation by persons and affected groups to achieve the purpose of this chapter;

(5) encourage and conduct studies, investigations, and research relating to occupational diseases and their causes, effects, prevention, abatement, and control;

(6) determine by means of field studies and sampling the degree of health hazard at any workplace in the state;

(7) collect and disseminate information and conduct educational and training programs relating to the prevention and control of occupational diseases;

(8) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and interested persons or groups;

(9) accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States, for the purpose of carrying out this chapter. Funds received by the department under this section must be deposited in the state treasury to the account of the department.

(10) adopt, amend, and repeal rules implementing and consistent with this chapter;

(11) hold hearings that relate to any aspect of or matter in the administration of this chapter at any place designated by the department;

(12) designate an attorney to assist in conducting hearings and appoint a reporter who must be present at all hearings and who shall take full stenographic notes of all proceedings, transcripts of which are available to the public at cost;

(13) issue orders necessary to carry out this chapter;

(14) require access to records relating to emissions;

(15) establish threshold limit values of airborne contaminants for the state as a whole.

History: En. 69-4211.1 by Sec. 38, Ch. 349, L. 1974; R.C.M. 1947, 69-4211.1; amd. Sec. 321, Ch. 546, L. 1995; amd. Sec. 2, Ch. 25, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 25 in introductory clause substituted "may" for "shall". Amendment effective July 1, 1999.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Contested case procedure, Title 2, ch. 4, part 6.

50-70-106. Repealed. Sec. 567, Ch. 546, L. 1995.

History: En. Sec. 6, Ch. 316, L. 1971; amd. Sec. 37, Ch. 349, L. 1974; R.C.M. 1947, 69-4211(part).

50-70-107. Duty of physicians and others to report occupational disease. (1) Before the 11th day after discovery, every physician, person in charge of a hospital or clinic, or state employee shall report an occupational disease to the department.

(2) The report shall be on forms prescribed by the department and include:

(a) name and address of the diseased person;

(b) name and business address of the employer;

(c) business of the employer;

(d) place of the person's employment;

(e) length of time the person was employed at the place where he became ill;

(f) nature of the disease;

(g) other information required by the department.

(3) Reports made under this section are neither public records nor open to public inspection. They are not admissible as evidence in any legal action or at a hearing under workers' compensation laws of this state.

History: En. Sec. 22, Ch. 197, L. 1967; R.C.M. 1947, 69-4204.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

Workers' compensation, Title 39, ch. 71.

50-70-108. Application for federal aid. The department may make application for, receive, administer, and expend any federal aid for the control of occupational diseases or the development and administration of industrial hygiene programs related to occupational disease control.

History: En. Sec. 15, Ch. 316, L. 1971; R.C.M. 1947, 69-4220; amd. Sec. 322, Ch. 546, L. 1995.

50-70-109. Confidentiality of records. (1) Records or other information concerning pollutants or operations that are furnished to or obtained by the department and that, as certified by the owner or operator, relate to production or sales figures or to processes or production unique to the owner or operator or that would tend to affect adversely the owner's or operator's competitive position are only for the confidential use of the department in the administration of this chapter unless the owner expressly agrees to their publication or availability to the general public.

(2) This section does not prevent the use of records or information by the department in compiling or publishing analyses or summaries relating to the general condition at the workplace if the analyses or summaries do not identify an owner or operator or reveal information made otherwise confidential by this section.

History: En. Sec. 14, Ch. 316, L. 1971; amd. Sec. 43, Ch. 349, L. 1974; R.C.M. 1947, 69-4219; amd. Sec. 323, Ch. 546, L. 1995.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Public records, Title 2, ch. 6.

50-70-110. Repealed. Sec. 4, Ch. 25, L. 1999.

History: En. Sec. 6, Ch. 316, L. 1971; amd. Sec. 37, Ch. 349, L. 1974; R.C.M. 1947, 69-4211(part); amd. Sec. 143, Ch. 418, L. 1995; amd. Sec. 324, Ch. 546, L. 1995.

50-70-111. Hearings. (1) A rule, amendment, or repeal may not take effect except as provided by the Montana Administrative Procedure Act.

(2) This section does not require a hearing prior to the issuance of an emergency order pursuant to 50-70-117.

(3) Any person aggrieved by any order of the department may request a contested case hearing pursuant to the provisions of Title 2, chapter 4, part 6.

History: En. Sec. 13, Ch. 316, L. 1971; amd. Sec. 42, Ch. 349, L. 1974; R.C.M. 1947, 69-4218; amd. Sec. 325, Ch. 546, L. 1995; amd. Sec. 3, Ch. 25, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 25 in (1) in first sentence after "except" deleted "after public hearing on due notice" and in second sentence substituted reference to Montana Administrative Procedure Act for "The notice must be given by public advertisement not less than 20 or more than 30 days prior to the date set for the hearing"; in (3) substituted language concerning request for contested case hearing for "apply for rehearing upon one or more of the following grounds and upon no other grounds:

(i) The department acted without or in excess of its powers.

(ii) The order was procured by fraud.

(iii) The order is contrary to the evidence.

(iv) The applicant has discovered new evidence material to the applicant that the applicant could not, with reasonable diligence, have discovered and produced at the hearing.

(v) Competent evidence was excluded to the prejudice of the applicant.

(b) The petition must be in a form and filed in the time that the department may prescribe"; and made minor changes in style. Amendment effective July 1, 1999.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Emergency rules, 2-4-303.

50-70-112. Permits. (1) The department may by rule prohibit the installation, alteration, or use of any machine, equipment, device, or other article which it finds may cause or contribute to occupational disease or which is intended primarily to prevent or control occupational disease, unless a permit has been obtained from it.

(2) The department may require that applications for permits must be accompanied by plans, specifications, and other information that it considers necessary.

(3) The department shall provide for the issuance, suspension, revocation, and renewal of permits which it may require pursuant to this section.

(4) If a permit is required, the department shall decide within 90 days after receiving application whether or not to issue the permit. If a decision is not rendered within that time, permission is considered to have been denied.

History: En. Sec. 7, Ch. 316, L. 1971; R.C.M. 1947, 69-4212; amd. Sec. 326, Ch. 546, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-70-113. Emissions prohibited. (1) The department may establish the limitations of the levels, concentrations, or quantities of emissions of various pollutants from any source necessary to prevent, abate, or control occupational diseases. Except as otherwise provided in or pursuant to this section, the levels, concentrations, or quantities must be controlled and emissions in excess of the limitations are unlawful. The department may also establish standards for sanitary facilities and lunchrooms.

(2) The department may by rule use any widely recognized measuring system for measuring emissions of pollutants.

(3) If federal minimum standards of industrial hygiene or occupational health are set by federal law, the department may, if necessary, set more stringent standards by rule.

History: En. Sec. 9, Ch. 316, L. 1971; R.C.M. 1947, 69-4214; amd. Sec. 327, Ch. 546, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-70-114. Variances. (1) Any person who owns or is in control of any plant, building, structure, process, or equipment may apply to the department for an exemption or partial exemption from rules governing the quality, nature, duration, or extent of emissions of pollutants. The application must be accompanied by the information and data that the department may require.

(2) The department may grant the exemption or partial exemption if it finds that:

(a) the emissions occurring or proposed to occur do not constitute an immediate danger to the health and safety of the worker; and

(b) compliance with the rules from which exemption is sought would produce hardship without equal or greater benefits to the worker.

(3) An exemption or partial exemption may not be granted pursuant to this section except after a public hearing on notice and until the department

has considered the relative interests of the applicant and the worker or workers involved.

(4) An exemption or partial exemption pursuant to this section may not be granted for a period to exceed 1 year, but an exemption or partial exemption may be renewed if a complaint is not made to the department or if, after a complaint has been made and considered at a public hearing held by the department on notice, the department finds that renewal is justified. A renewal may not be granted except on application. Application for renewal must be made at least 60 days prior to the expiration of the exemption or partial exemption. Immediately prior to application for renewal, the applicant shall give public notice of the application in accordance with the rules of the department. Any renewal pursuant to this subsection must be on the same grounds and subject to the same limitations and requirements as provided in subsection (2)(a).

(5) An exemption, partial exemption, or renewal is not a right of the applicant or holder but is in the discretion of the department.

(6) This section and any exemption, partial exemption, or renewal granted may not be construed to prevent or limit the application of the emergency provisions and procedures of 50-70-117 to any person or the person's property.

History: En. Sec. 12, Ch. 316, L. 1971; R.C.M. 1947, 69-4217; amd. Sec. 22, Ch. 37, L. 1979; amd. Sec. 328, Ch. 546, L. 1995.

Cross-References

Criminal responsibility of corporations, 45-2-311.

50-70-115. Inspection. (1) The department may enter and inspect at a reasonable time property, premises, or a place, except a private residence, where a person is or will be employed to ascertain the state of compliance with this chapter and rules adopted under it.

(2) A person may not refuse entry or access to the department when it requests entry for purposes of inspection. A person may not obstruct, hamper, or interfere with an inspection.

(3) At his request, the owner or operator of the premises shall receive a report setting forth facts found which relate to compliance status.

History: En. Sec. 8, Ch. 316, L. 1971; amd. Sec. 39, Ch. 349, L. 1974; R.C.M. 1947, 69-4213.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-70-116. Enforcement. (1) When the department has reason to believe that a violation of this chapter or rule made under it has occurred, it may have written notice and the facts alleged to constitute a violation served on the alleged violator and may include an order to take necessary corrective action within a reasonable period of time stated in the order. An order becomes final unless, no later than 30 days after the date of notice is received, the person named requests in writing a hearing before the department. On receipt of a request, the department shall hold a hearing.

(2) If, after a hearing held under subsection (1), the department finds that a violation has occurred, it shall either affirm or modify an order previously issued or issue an appropriate order for the prevention, abatement, or control

of the emissions involved or for the taking of other corrective action it considers appropriate. If, after hearing on an order contained in a notice, the department finds that no violation is occurring, it shall rescind the order. An order issued as part of a notice or after hearing may prescribe the date by which the violation shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the pollutant.

(3) Instead of issuing the order provided for in subsection (1), the department may either:

(a) require that the alleged violator appear before it for a hearing at a time and place specified in a notice and answer the charges complained of; or

(b) initiate action under 50-70-118.

(4) This chapter does not prevent the department from making efforts to obtain voluntary compliance through warning, conference, or other appropriate means.

(5) In connection with a hearing held under this section, the department may, and on application by a party shall, compel the attendance of witnesses and the production of evidence on behalf of parties.

History: En. Sec. 10, Ch. 316, L. 1971; amd. Sec. 40, Ch. 349, L. 1974; R.C.M. 1947, 69-4215; amd. Sec. 329, Ch. 546, L. 1995.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

Subpoenas and witnesses, Title 26, ch. 2.

50-70-117. Emergency procedure. (1) Any other law to the contrary notwithstanding, if the department finds that a generalized hazard at a workplace exists and that it creates an emergency requiring immediate action to protect human health, the department shall order persons causing or contributing to the hazard to reduce or discontinue immediately the emissions creating the hazard. Upon issuance of this order, the department shall fix a place and time, not later than 72 hours after issuance, for a hearing to be held before the department. Not more than 24 hours after the commencement of the hearing and without adjournment, the department shall affirm, modify, or set aside the order.

(2) In the absence of a generalized condition as that referred to in subsection (1), if the department finds that emissions from an operation are causing imminent danger to human health, it may order the person responsible for the operation in question to reduce or discontinue emissions immediately without regard to 50-70-116. In this event, the requirements for hearing and affirmance, modification, or setting aside of orders provided in 50-70-116 apply.

(3) This section does not limit any power which the governor or any other officer may have to declare an emergency and act on the basis of the declaration, whether the power is conferred by statute, constitutional provisions, or inheres in the office.

History: En. Sec. 11, Ch. 316, L. 1971; amd. Sec. 41, Ch. 349, L. 1974; R.C.M. 1947, 69-4216; amd. Sec. 330, Ch. 546, L. 1995.

Cross-References

Disaster and emergency services, Title 10, ch. 3.

50-70-118. Penalty. (1) A person who violates this chapter relating to limitations of levels, concentrations, or quantities of emissions of various pollutants from a source determined to be necessary to prevent, abate, or control occupational diseases (unless in compliance with this chapter) is guilty of an offense and subject to a fine not to exceed $1,000. Each day of violation constitutes a separate offense.

(2) Proceedings under this section are not a bar to enforcement of this chapter or of rules or orders made under it by injunction or other appropriate remedy. The department may institute and maintain in the name of the state these enforcement proceedings.

(3) This chapter does not abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damage or other relief on account of injury to persons or property and to maintain an action or other appropriate proceeding.

(4) Fines collected, except those collected by a justice's court, shall be deposited to the state general fund.

History: En. Sec. 16, Ch. 316, L. 1971; amd. Sec. 44, Ch. 349, L. 1974; R.C.M. 1947, 69-4221; amd. Sec. 36, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Availability of remedies — liability, Title 27, ch. 1.

Injunctions, Title 27, ch. 19.

CHAPTER 71

OCCUPATIONAL SAFETY

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Part 1
General Provisions

Part Cross-References

Workers' compensation, Title 39, ch. 71.

Occupational Disease Act of Montana, Title 39, ch. 72.

Silicosis benefits, Title 39, ch. 73.

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

50-71-101. Short title. This chapter may be cited as the "Montana Safety Act".

History: En. Sec. 1, Ch. 341, L. 1969; R.C.M. 1947, 41-1708.

50-71-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Amendment" means such modification or change in a code as shall be intended to be of universal or general application.

(2) "Code" means a standard body of rules for safety formulated, adopted, and issued by the department under the provisions of this chapter.

(3) "Department" means the department of labor and industry.

(4) "Employee" and "worker" are defined as in 39-71-118.

(5) "Employer" is defined as in 39-71-117.

(6) "Variation" means a special, limited modification or change in the code which is applicable only to the particular place of employment of the employer or person petitioning for such modification or change.

History: En. Sec. 2, Ch. 341, L. 1969; amd. Sec. 1, Ch. 182, L. 1975; R.C.M. 1946, 41-1709; amd. Sec. 48, Ch. 613, L. 1989.

50-71-103. Contractors subject to chapter — contract provision required. (1) A contractor performing services for the state or any of its political subdivisions is required to comply with the safety rules, codes, and provisions of this chapter as a part of the contract.

(2) The requirement imposed by subsection (1) must be expressly stated in a contract between a contractor and a governmental entity.

History: En. Sec. 24, Ch. 341, L. 1969; R.C.M. 1947, 41-1731; amd. Sec. 10, Ch. 514, L. 1995.

Cross-References

Public contracts generally, Title 18, ch. 1.

50-71-104. Effect on existing structures and equipment. Nothing contained in this chapter shall prevent the use of existing buildings, structures, and equipment during their lifetime when they are maintained in good condition, are properly safeguarded, and conform to the applicable safety standards required by Montana safety codes effective prior to July 1, 1969, provided that replacements and alterations shall conform to all provisions of this chapter.

History: En. Sec. 25, Ch. 341, L. 1969; R.C.M. 1947, 41-1732.

50-71-105. Qualifications of safety bureau chief. The safety bureau chief shall be a person with at least 2 years' experience or training in the field of industrial safety.

History: En. Sec. 6, Ch. 341, L. 1969; amd. Sec. 2, Ch. 182, L. 1975; R.C.M. 1947, 41-1713(part).

50-71-106. Administrative powers and duties of department. In the administration of this chapter, the department:

(1) is vested with full power and jurisdiction over and shall have such supervision of every employment and place of employment in this state as may be necessary to enforce and administer all laws and all lawful orders requiring such employment and places of employment to be safe and requiring the protection of the life and safety of every employee in such employment or place of employment;

(2) shall carry out the provisions of this chapter;

(3) may adopt and enforce all necessary and reasonable rules and provisions for the purpose of carrying this chapter into effect and in reference to the investigation of all violations of this chapter and fix and set the time and place for all hearings which may be necessary or expedient for the purpose of carrying the provisions of this chapter into effect;

(4) may on its own motion or at the request of others subpoena witnesses, administer oaths, take depositions, fix the fees and mileage of witnesses, and compel the attendance of witnesses and the production of papers, books, accounts, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of this state, and the department shall provide for defraying the expenses thereof.

History: En. Sec. 6, Ch. 341, L. 1969; amd. Sec. 2, Ch. 182, L. 1975; R.C.M. 1947, 41-1713(part); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Contested case procedure, Title 2, ch. 4, part 6.

Subpoenas and witnesses, Title 26, ch. 2.

50-71-107. General research and review powers of department. The department may develop greater knowledge and interest in the causes and prevention of industrial accidents, occupational diseases, and related subjects through:

(1) research, conferences, lectures, and uses of public communications media;

(2) collection and dissemination of accident statistics; and

(3) development of staff competent in the review of safety codes.

History: En. Sec. 22, Ch. 341, L. 1969; amd. Sec. 18, Ch. 182, L. 1975; R.C.M. 1947, 41-1729(1); amd. Sec. 64, Ch. 613, L. 1989.

50-71-108. Power to appoint advisers. The department may appoint advisers who shall be compensated by the department if necessary and who shall assist the department in establishing standards of safety. The department may adopt and incorporate in its orders such safety recommendations as it may receive from such advisers.

History: En. Sec. 22, Ch. 341, L. 1969; amd. Sec. 18, Ch. 182, L. 1975; R.C.M. 1947, 41-1729(2); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Creation of advisory councils, 2-15-122.

50-71-109. Duties of department regarding occupational health hazards. The department shall report occupational health hazards discovered in its investigations and inspection of places of employment to the department of environmental quality and shall cooperate with that department in carrying out its duties as specified in chapter 70 of this title.

History: En. Sec. 26, Ch. 341, L. 1969; amd. Sec. 19, Ch. 182, L. 1975; R.C.M. 1947, 41-1733; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 144, Ch. 418, L. 1995; amd. Sec. 331, Ch. 546, L. 1995.

50-71-110. Violation of safety provision a misdemeanor. In addition to all other penalties herein provided, every employer, worker, or other person who either individually or acting as an officer, agent, or employee of a corporation or other person violates any safety provision of this chapter or who directly or indirectly knowingly induces another to do so is guilty of a misdemeanor.

History: En. Sec. 23, Ch. 341, L. 1969; R.C.M. 1947, 41-1730.

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

Part 2

Duties of Employer and Employee

Part Cross-References

Workers' compensation, Title 39, ch. 71.

Occupational Disease Act of Montana, Title 39, ch. 72.

Silicosis benefits, Title 39, ch. 73.

50-71-201. Employer to provide safe workplace and to purchase, furnish, and require use of health and safety items — safe practices. Each employer shall:

(1) furnish a place of employment that is safe for each of his employees;

(2) with the exception of footwear, purchase, furnish, and require the use of health and safety devices, safeguards, protective safety clothing, or other health and safety items, including but not limited to air masks, hardhats, and protective gloves, that may be required by state or federal law, the employer, or the terms of an employment contract, unless the terms of a collective bargaining agreement provide otherwise;

(3) adopt and use practices, means, methods, operations, and processes that are reasonably adequate to render the place of employment safe; and

(4) do any other thing reasonably necessary to protect the life, health, and safety of his employees.

History: En. Sec. 3, Ch. 341, L. 1969; R.C.M. 1947, 41-1710; amd. Sec. 1, Ch. 298, L. 1991.

50-71-202. Employer to provide and maintain safe place of employment. (1) An employer who is the owner or lessee of any real property in this state shall not construct or cause to be constructed or maintained any place of employment that is unsafe.

(2) Every employer who is the owner of a place of employment or lessee thereof shall repair and maintain the same as to render it safe.

History: En. Sec. 4, Ch. 341, L. 1969; R.C.M. 1947, 41-1711.

50-71-203. Removal of or refusal to use health and safety items prohibited. A person may not:

(1) remove, displace, damage, destroy, carry off, or refuse to use any health and safety device, safeguard, protective clothing, or other health and safety item furnished for his use by his employer;

(2) interfere with the use of any required health and safety device, safeguard, protective clothing, or other health and safety item by any other person;

(3) interfere with the use of a method or process adopted for the protection of an employee in the place of employment; or

(4) fail to do any other thing reasonably necessary to protect the life, health, and safety of employees.

History: En. Sec. 5, Ch. 341, L. 1969; R.C.M. 1947, 41-1712; amd. Sec. 2, Ch. 298, L. 1991.

Part 3

Safety Rules and Orders

Part Cross-References

Workers' compensation, Title 39, ch. 71.

Occupational Disease Act of Montana, Title 39, ch. 72.

Silicosis benefits, Title 39, ch. 73.

50-71-301. Department's power to prescribe safety devices and fix and order safety standards. The department may, after hearing had upon its own motion or upon complaint, by safety orders, rules, or otherwise:

(1) declare and prescribe what safety devices, safeguards, or other means or methods of protection are well adapted to render the employees of every employment and place of employment safe as required by law;

(2) fix reasonable standards and prescribe, modify, and enforce such reasonable orders for the adoption, installation, use, maintenance, and operation of safety devices, safeguards, and other means or methods of protection to be as nearly uniform as possible as may be necessary to carry out all laws and lawful orders relative to the protection of the life and safety of the employees and places of employment;

(3) fix and order such reasonable standards for the construction, repair, and maintenance of places of employment and equipment as shall render them safe;

(4) require the performance of any other act which the protection of the life and safety of employees in employments and places of employment may demand.

History: En. Sec. 8, Ch. 341, L. 1969; amd. Sec. 4, Ch. 182, L. 1975; R.C.M. 1947, 41-1715; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References
Montana Administrative Procedure Act, Title 2, ch. 4.

50-71-302. Notice of hearing on rules and codes. Upon the fixing of a time and place for the holding of a public hearing for the purpose of considering and issuing rules and codes as authorized in this chapter, the department shall cause a notice of the hearing to be published in one or more daily newspapers of general circulation published in this state and in such other papers of general circulation in this state as the department may deem expedient. The notice shall contain a brief statement of the time, place, and purpose of the hearing. No defect or inaccuracy in the notice or in the publication thereof shall invalidate any rule or code issued or adopted by the department after the hearing.

History: En. Sec. 9, Ch. 341, L. 1969; amd. Sec. 5, Ch. 182, L. 1975; R.C.M. 1947, 41-1716; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References
Adoption and publication of rules, Title 2, ch. 4, part 3.

50-71-303. Procedure to compel testimony or production of evidence. (1) The department or any member thereof before whom testimony is to be given or produced, in the case of refusal of any witness to attend or testify or produce any papers required by such subpoena, may in applying to the district court in and for the county in which the proceeding is pending show that the witness has been subpoenaed in the manner prescribed and the witness has failed or refused to attend or produce the papers required by the subpoena or has refused to answer questions propounded to him in the course of such proceeding and ask the court to compel the witness to attend and testify or produce such papers before the department.

(2) The court, upon such application, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court then and there to show cause why the witness has not attended and testified or produced the papers before the department or any member thereof.

(3) A copy of the order shall be served upon the witness.

(4) If it is apparent to the court that the subpoena was regularly issued by the department or member thereof, the court thereupon shall enter an order that the witness appear before the department or member thereof at a time and place to be fixed in such order and testify and produce the required papers, and upon failure to obey the order, the witness shall be dealt with as for contempt of court.

History: En. Sec. 7, Ch. 341, L. 1969; amd. Sec. 3, Ch. 182, L. 1975; R.C.M. 1947, 41-1714; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References
Right of privacy, Art. II, sec. 10, Mont. Const.
Searches and seizures, Art. II, sec. 11, Mont. Const.
Contempts, Title 3, ch. 1, part 5.
Subpoena and witnesses, Title 26, ch. 2.

50-71-304 through 50-71-310 reserved.

50-71-311. Safety codes authorized. (1) The department may adopt, amend, repeal, and enforce rules for the prevention of accidents to be known as "safety codes" in every employment and place of employment, including the repair and maintenance of such places of employment, to render them safe.

(2) In the performance of its duties, the department may appoint advisory committees to deal with specified industries composed of equal numbers of employers and employees and others to suggest safety codes or amendments thereto.

History: En. Sec. 20, Ch. 341, L. 1969; amd. Sec. 16, Ch. 182, L. 1975; R.C.M. 1947, 41-1727(part); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Creation of advisory councils, 2-15-122.

50-71-312. Codes to be consistent with other safety codes. (1) All such safety codes and rules shall, when adopted, be not inconsistent with the then-existing widely accepted codes of such engineering bodies as the American society of mechanical engineers, the American standards association, the American society of safety engineers, the United States of America standards institute, the national fire protection association and, in addition, agencies of the federal government with responsibilities for administering worker safety programs and other accepted codes.

(2) Any amendments made to such codes by the department shall be such that, when amended, such code shall be consistent with the widely accepted safety codes as then existing.

History: En. Sec. 20, Ch. 341, L. 1969; amd. Sec. 16, Ch. 182, L. 1975; R.C.M. 1947, 41-1727(part); amd. Sec. 64, Ch. 613, L. 1989.

50-71-313. Effective date of codes. All codes and all amendments thereto and repeals thereof shall take effect 30 days after certified copies thereof shall be filed in the office of the secretary of state.

History: En. Sec. 20, Ch. 341, L. 1969; amd. Sec. 16, Ch. 182, L. 1975; R.C.M. 1947, 41-1727(part).

Cross-References

Secretary of State, Title 2, ch. 15, part 4.

50-71-314. Codes to be published. Every code adopted and every amendment or repeal thereof shall be published in such manner as the department may determine. A printed list of all titles of all codes including amendments thereof issued and adopted by the department under the provisions of this chapter, together with the dates of adoption thereof, shall be published from time to time.

History: En. Sec. 20, Ch. 341, L. 1969; amd. Sec. 16, Ch. 182, L. 1975; R.C.M. 1947, 41-1727(2); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-71-315. Variations to code. (1) In case of practical difficulties, the department may grant variations from particular provisions of the code and permit the use of other or different devices or methods. However, such variations shall be granted only when it is clear that the reasonable safety of the workers in the plant or place of employment is not thereby endangered.

(2) In any case where the department shall decline or refuse to grant any request for variations on the ground that the safety of the workers involved

would be endangered, the employer may request a rehearing as specified in this chapter.

(3) A properly indexed record of all variations made shall be kept in the office of the department and be open to public inspection.

History: En. Sec. 21, Ch. 341, L. 1969; amd. Sec. 17, Ch. 182, L. 1975; R.C.M. 1947, 41-1728(part); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

50-71-316. Assistance in compliance. Any employer may consult with the department for advice and assistance in complying with the provisions of this chapter or any codes adopted hereunder.

History: En. Sec. 21, Ch. 341, L. 1969; amd. Sec. 17, Ch. 182, L. 1975; R.C.M. 1947, 41-1728(part); amd. Sec. 64, Ch. 613, L. 1989.

50-71-317 through 50-71-320 reserved.

50-71-321. Periodic inspections. (1) Except as provided in 50-72-201 and 50-72-202, the department shall inspect from time to time all the places of employment defined in the Montana Workers' Compensation Act as being hazardous and the machinery and appliances in those places of employment for the purpose of determining compliance.

(2) A report of a periodic inspection must be filed in the office of the department and a copy of that report must be given to the employer. The report may not be open to public inspection or made public except on order of the department or by the department in the course of a hearing or proceeding.

History: En. Sec. 18, Ch. 341, L. 1969; amd. Sec. 14, Ch. 182, L. 1975; R.C.M. 1947, 41-1725; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1, Ch. 307, L. 1997.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Workers' compensation, Title 39, ch. 71.

50-71-322. Procedure for worker to report safety violation. (1) A worker shall notify the worker's employer of any violation of law or regulation pertaining to safety of places of employment when the violation comes to the knowledge of the worker.

(2) If the employer fails to remedy the violation, the worker may complain in writing to the department of the violation.

(3) Upon receiving the complaint, the department shall forthwith inquire or make an inspection as to the safety of the place of employment. A copy of the report of inspection shall be given to the complainant.

History: En. Sec. 19, Ch. 341, L. 1969; amd. Sec. 15, Ch. 182, L. 1975; R.C.M. 1947, 41-1726; amd. Sec. 64, Ch. 613, L. 1989.

50-71-323. Order directing additions, repairs, improvements, or changes. (1) Whenever the department, after an inspection and a closing conference with an employer and an employee representative, finds that an employment or place of employment is not safe or that the practices, methods, operations, or processes used by the employer are unsafe or do not afford adequate protection to the life and safety of employees in the employment or place of employment, the department shall issue an order outlining the unsafe or inadequate practices, methods, operations, or processes currently used and directing additions, repairs, improvements, or changes in the employment or place of employment that are necessary to protect the life and safety of employees in the employment or place of employment.

(2) The department may in the order direct that additions, repairs, improvements, or changes be made and that safety devices and safeguards be furnished, provided, and used that are necessary to ensure a safe employment or place of employment within the time specified in the order.

History: En. Sec. 10, Ch. 341, L. 1969; amd. Sec. 6, Ch. 182, L. 1975; R.C.M. 1947, 41-1717; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 11, Ch. 514, L. 1995.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

50-71-324. Time allowed for compliance with order. The department shall grant such time as may be reasonably necessary for compliance with any order, and any person affected by the order may petition the department for an extension of time, which the department shall grant if it finds the extension of time necessary.

History: En. Sec. 12, Ch. 341, L. 1969; amd. Sec. 8, Ch. 182, L. 1975; R.C.M. 1947, 41-1719; amd. Sec. 64, Ch. 613, L. 1989.

50-71-325. Department authorized to prohibit further use of equipment constituting violation. (1) The department, upon finding any violation of any duly adopted safety code, order, or rule involving failure to install or maintain any safety appliance, device, or safeguard required by such safety order, code, or rule, may prohibit the further use of the machine, equipment, or apparatus constituting such violation and, when such use is prohibited, shall post notice in an appropriate place in plain view of any person likely to use the same calling attention to the unsafe condition, defect, or lack of safeguard and the fact that the further use thereof is prohibited.

(2) The notice required by subsection (1) of this section shall not be removed until the required safety appliance, device, or safeguard complies with the requirement of the safety order or safety code.

(3) Every person who, after the notice required by subsection (1) of this section is posted as provided in that subsection, uses or operates any place of employment, machine, device, apparatus, or equipment referred to in subsection (1) of this section before it is made safe and the required safeguards or safety appliances or devices are provided or who defaces or destroys or removes any notice required by subsection (1) of this section without the authority of the department or who fails or refuses to file a report of accident as required by 39-71-307(1) is guilty of a misdemeanor and, in addition to the punishment provided for misdemeanors, is subject to a civil penalty in an amount of not more than $1,000. This civil penalty may be imposed and collected by the department in an action brought in the name of the state in the county in which the employer resides or in which he employs workers. Any penalty collected under this subsection shall be paid into the department's state special revenue account.

(4) Any person aggrieved by an order prohibiting the use of the machine, equipment, apparatus, or place of employment as provided for in this section may request a hearing before the department within 20 days after entry of such order. The department shall then affirm, modify, or revoke the order, and all

procedures of this chapter relative to entry of orders, rehearing, and appeal shall apply.

History: En. Sec. 11, Ch. 341, L. 1969; amd. Sec. 7, Ch. 182, L. 1975; R.C.M. 1947, 41-1718(1) thru (4); amd. Sec. 23, Ch. 37, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

Misdemeanor penalty when none specified, 46-18-212.

50-71-326. Injunction authorized. In addition to all other remedies provided in this chapter, the department may bring an action to enjoin any violation of any duly adopted safety order, code, or rule.

History: En. Sec. 11, Ch. 341, L. 1969; amd. Sec. 7, Ch. 182, L. 1975; R.C.M. 1947, 41-1718(5); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Injunctions, Title 27, ch. 19.

50-71-327. Department authorized to order closure or cessation of work. (1) The department may order any place of employment closed or the work therein to cease if it is found that the place of employment is in such an unsafe condition as to constitute an immediate menace to the life or safety of the workers employed therein. Any such order of closure or for cessation of work shall be expressly limited to only that portion of the plant, installation, or facility as is directly and immediately affected by the unsafe condition constituting an immediate menace to the life and safety of the workers employed therein.

(2) Upon issuance of any such order, the department shall fix a place and time not later than 24 hours thereafter for a hearing to be held before the department. Not more than 24 hours after the commencement of the hearing and without adjournment thereof, the department shall affirm, modify, or set aside the order.

(3) Nothing in this section shall empower the department to determine that any employment or place of employment is in an unsafe condition on the basis of the number or qualifications of employees operating such employment or place of employment unless a specific rule adopted after public hearing is violated. Provided that, for those employments or places of employment for which no code has been adopted and where it is found by the department that such place of employment is in such an unsafe condition as to constitute an immediate menace to the life or safety of the workers there employed, the department may order that portion of the plant, installation, or facility as is directly and immediately affected by such unsafe condition closed for a period not to exceed 4 hours unless such period be extended by order of the department.

History: En. Sec. 13, Ch. 341, L. 1969; amd. Sec. 9, Ch. 182, L. 1975; R.C.M. 1947, 41-1720; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

50-71-328 through 50-71-330 reserved.

50-71-331. Right to apply for rehearing. Any party aggrieved directly or indirectly by any final order, decision, or rule of the department made or entered pursuant to this chapter may apply to the department, within 20 days after the order of the department, for rehearing in respect to any matters determined or covered by such final order, decision, or rule and specified in the application for hearing within the time and in the manner prescribed in this chapter.

History: **En. Sec. 15, Ch. 341, L. 1969; amd. Sec. 11, Ch. 182, L. 1975; R.C.M. 1947, 41-1722; amd. Sec. 64, Ch. 613, L. 1989.**

50-71-332. Application for rehearing. (1) The application for rehearing shall set forth specifically and in full detail the grounds upon which the applicant considers the final order, decision, or rule is unjust or unlawful and every issue to be considered by the department.

(2) The applicant for rehearing shall be deemed to have finally waived all objections, irregularities, and illegalities concerning the matters upon which rehearing is sought other than those set forth in the application.

(3) A copy of the application for rehearing shall be served immediately on all adverse parties, who may file an answer thereto within 10 days after being served.

(4) If there are no adverse parties, the application may be heard ex parte or the department may require the application for rehearing to be served on such parties as may be designated by the department.

History: **En. Sec. 16, Ch. 341, L. 1969; amd. Sec. 12, Ch. 182, L. 1975; R.C.M. 1947, 41-1723; amd. Sec. 64, Ch. 613, L. 1989.**

50-71-333. Disposition of application for rehearing. (1) Upon the filing of the application for rehearing, if the issues raised thereby have theretofore been adequately considered by the department, it may determine the same by confirming without hearing its previous determination or, if a rehearing is necessary to determine one or more of the issues raised, the department shall order a rehearing thereon and consider and determine the matters raised by such application.

(2) Notice of the time and place of the rehearing shall be given to the applicant, the adverse parties, and such other persons as the department may order.

(3) If, after the rehearing and the consideration of all the facts, including those arising since the making of the order or decision involved, the department shall be of the opinion that all or any part of the original order or decision is in any respect unjust or unwarranted or should be changed, the department shall abrogate, change, or modify the same.

(4) An order or decision made after the rehearing abrogating, changing, or modifying the original order or decision shall have the same force and effect as an original order or decision but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the department.

(5) An application for rehearing is considered denied by the department unless it has been acted upon within 30 days from the date of filing; provided that the department may, upon good cause being shown therefor, extend the time within which it may act upon an application for rehearing for not exceeding an additional 30 days.

History: **En. Sec. 17, Ch. 341, L. 1969; amd. Sec. 13, Ch. 182, L. 1975; R.C.M. 1947, 41-1724; amd. Sec. 64, Ch. 613, L. 1989.**

50-71-334. Judicial review. (1) The orders of the department, its rules, findings, and decisions made and entered under the provisions of this chapter may be reviewed by the courts within the time and in the manner specified in this section and not otherwise.

(2) Within 30 days after an application for rehearing is denied or, if the application is granted, within 30 days after rendition of the decision on the rehearing, any party affected thereby may appeal to the district court for the county in which is situated the place of employment complained of for the purpose of having the lawfulness of the original order or decision or the order or decision on rehearing inquired into and determined.

(3) To give the district court jurisdiction, it is sufficient that a notice be filed with the clerk of the court to the effect that an appeal is taken to the district court from the order or decision of the department and describing the order or decision sufficiently for purposes of identification. The notice shall be signed by the party appealing or his attorney, and a copy thereof shall be served by certified mail upon the department.

(4) Within 10 days after the receipt of the notice, the department shall file with the clerk of court the record of proceedings before the department, including a transcript of all the evidence adduced upon the hearing and any rehearing before the department. The district court, on application for good cause shown, may extend the time within which the department shall file the record, transcript, and evidence.

(5) The cause shall be tried in the same manner as a civil action, provided that no new or additional evidence may be introduced in the court, but the cause shall be heard on the record to the court as certified to it by the department.

(6) The appeal shall not be extended further than to determine whether or not:

(a) the department acted without or in excess of its powers or in violation of the law;

(b) the order or decision was procured by fraud;

(c) the order, decision, or rule is unreasonable;

(d) if findings of fact are made, the finding of fact supports the order or decision under review.

(7) An appeal may be taken from the decree of the district court to the supreme court as in all other civil cases.

History: En. Sec. 14, Ch. 341, L. 1969; amd. Sec. 10, Ch. 182, L. 1975; R.C.M. 1947, 41-1721; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Montana Rules of Appellate Procedure, Title 25, ch. 21.

CHAPTER 72

SAFETY IN MINES OTHER THAN COAL MINES

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Chapter Cross-References

Workers' compensation, Title 39, ch. 71.

Occupational Disease Act of Montana, Title 39, ch. 72.

Silicosis benefits, Title 39, ch. 73.

Part 1

General Provisions

50-72-101. Applicability of chapter. This chapter shall apply to all mines (except coal and lignite) and individuals, owners, lessors, lessees, agents, partnerships, corporations, managers, operators, or employers operating any surface or underground metal or nonmetallic mines in this state. These individuals, owners, lessors, lessees, agents, partnerships, corporations, managers, operators, or employers operating any surface or underground metal or nonmetallic mines (excluding coal and lignite) shall report the same to the department, state the name of the mine, the location of the same, the name of the company, person, or persons owning or operating the same, post-office address, and number of persons employed.

History: En. Sec. 6, Ch. 98, L. 1903; re-en. Sec. 1720, Rev. C. 1907; re-en. Sec. 3425, R.C.M. 1921; re-en. Sec. 3425, R.C.M. 1935; amd. Sec. 3, Ch. 310, L. 1971; amd. Sec. 22, Ch. 182, L. 1975; R.C.M. 1947, 50-108; amd. Sec. 64, Ch. 613, L. 1989.

50-72-102. Definitions. (1) "Authorized representative" means mine inspector or any other person employed or authorized by the department to perform any and all duties under this chapter.

(2) "Corporation" means a body formed and authorized by law to act as a single person although constituted by one or more persons and legally endowed with various rights and duties, including the capacity of succession.

(3) "Department" means the department of labor and industry.

(4) "Employee" means every person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as hereinafter defined, in or about any mine, mill, smelter, excavation, or quarry under any appointment or contract of hire, express or implied, oral or written, whether lawfully or unlawfully employed and whether the employment is casual or otherwise.

(5) "Employer" means every person, firm, partnership, corporation, or association, including an independent contractor, who has any person in service

in or about any mine, mill, smelter, excavation, or quarry under any appointment or contract of hire, express or implied, oral or written.

(6) "Inspector" means a person employed by the department to inspect metallic and nonmetallic mines, mills, smelters, or quarries as provided in this chapter.

(7) "Mine" means any mine or excavation when clay, metallic ore, mineral, gypsum, or rock is dug or mined, whether on surface or underground, where metal-bearing ores or nonmetallic mineral commodities (exclusive of coal or lignite) are dug or mined whether at the surface or underground.

(8) "Notice" means a written notice, work order, or correction notice issued by an authorized representative of the department, which notice specifies a violation and directs or recommends corrective measures and may specify a definite date or time in which to abate said violation.

(9) "Occupational health" means any of those health conditions that occur as a result of employment in a mine.

(10) "Order" means and includes any decision, rule, regulation, direction, requirement, or standard set, adopted, or issued by the department or any other determination or decision made by the department.

History: En. 50-119 by Sec. 5, Ch. 310, L. 1971; amd. Sec. 24, Ch. 182, L. 1975; R.C.M. 1947, 50-119; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Workers' compensation, Title 39, ch. 71.

50-72-103. Injunctions and other civil relief authorized. A civil action for preventive relief, including but not limited to an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the department in the district court for the county in which the mine in question is located or in which the mine operator has its principal office whenever an operator:

(1) violates or fails or refuses to comply with any order, rule, or regulation issued under this chapter;

(2) interferes with, hinders, or delays the department or its authorized representatives in carrying out any duties under this chapter;

(3) refuses to admit an authorized representative of the department to any mine which is subject to this chapter;

(4) refuses to permit the inspection or investigation of any mine which is subject to this chapter or an accident, injury, or occupational disease occurring in or connected with such a mine; or

(5) refuses to furnish the department any information or report requested by the department and which may reasonably be necessary to carry out the provisions of this chapter.

History: En. Sec. 4, Ch. 72, L. 1911; re-en. Sec. 3435, R.C.M. 1921; re-en. Sec. 3435, R.C.M. 1935; amd. Sec. 4, Ch. 310, L. 1971; amd. Sec. 23, Ch. 182, L. 1975; R.C.M. 1947, 50-118(a); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Injunctions, Title 27, ch. 19.

50-72-104. Violations a misdemeanor. (1) Any person who knowingly:

(a) violates or fails or refuses to comply with any order, rule, or regulation issued under this chapter;

(b) interferes with, hinders, or delays the department or its authorized representatives in carrying out any duties under this chapter;

(c) refuses to admit an authorized representative of the department to any mine which is subject to this chapter;

(d) refuses to permit the inspection or investigation of any mine which is subject to this chapter or an accident, injury, or occupational disease occurring in or connected with such a mine; or

(e) refuses to furnish the department any information or report requested by the department and which may reasonably be necessary to carry out the provisions of this chapter, shall be guilty of a misdemeanor and shall upon conviction thereof be punished for each such offense by a fine of not less than $100 or more than $3,000, by imprisonment in the county jail not exceeding 6 months, or both.

(2) In any instance in which such offense is committed by a corporation, any officer or authorized representative of such corporation who knowingly permits such offense to be committed shall upon conviction be subject to the same fine or imprisonment, or both.

History: En. Sec. 4, Ch. 72, L. 1911; re-en. Sec. 3435, R.C.M. 1921; re-en. Sec. 3435, R.C.M. 1935; amd. Sec. 4, Ch. 310, L. 1971; amd. Sec. 23, Ch. 182, L. 1975; R.C.M. 1947, 50-118(b); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Part 2
Inspections and Investigations

50-72-201. Inspectors. (1) Except as provided in subsection (2), as long as the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801, et seq., is administered and enforced with respect to metallic and nonmetallic mines in Montana by means that include regular inspections of mines by federal inspectors, the department is not authorized to conduct inspections of those mines. If regular inspections of Montana metallic and nonmetallic mines by federal inspectors in the enforcement of the federal act are discontinued by federal action, the department is authorized to employ an adequate number of qualified metallic and nonmetallic mine inspectors necessary for the enforcement of this chapter and shall prescribe their powers, duties, and responsibilities.

(2) The department is authorized to employ an adequate number of qualified inspectors for sand and gravel mining operations and to prescribe the powers, duties, and responsibilities of those inspectors.

History: En. Sec. 1, p. 109, L. 1897; re-en. Sec. 1711, Rev. C. 1907; amd. Sec. 1, Ch. 71, L. 1909; amd. Sec. 1, Ch. 22, L. 1921; re-en. Sec. 3418, R.C.M. 1921; re-en. Sec. 3418, R.C.M. 1935; amd. Sec. 1, Ch. 310, L. 1971; amd. Sec. 20, Ch. 182, L. 1975; R.C.M. 1947, 50-101; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 2, Ch. 307, L. 1997.

50-72-202. Inspections and investigations — when authorized. (1) Except as provided in subsection (2), as long as the Federal Mine Safety and Health Act of 1977 is administered and enforced with respect to metallic and nonmetallic mines in Montana by means that include regular inspection of mines by federal inspectors, the department is not authorized to make inspections in those mines. If inspections of Montana metallic and nonmetallic mines by federal inspectors in the enforcement of the federal act are discontinued by federal action, the department is authorized to make inspections and investigations that are necessary in surface and underground mines that are subject to this chapter:

(a) for the purpose of obtaining, using, and disseminating information relating to health and safety conditions in mines, the causes of accidents involving bodily injury or loss of life, or the causes of occupational diseases originating in surface and underground mines; and

(b) for the purpose of determining whether or not there is compliance with a health and safety standard or order issued under this chapter.

(2) The department is authorized to make inspections and investigations with respect to sand and gravel mining operations for the purposes prescribed under subsections (1)(a) and (1)(b).

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(a); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 3, Ch. 307, L. 1997.

Cross-References

Open mine shaft — criminal penalty, 45-8-113.

50-72-203. Inspectors and investigators to have free access to mines. For the purpose of making any inspection or investigation authorized by this chapter, authorized representatives of the department shall have the right of entry to, upon, or through any mine which is subject to this chapter.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(b); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Right of privacy, Art II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-72-204. Debarment of persons from mine when death or serious injury likely. If, upon any inspection of a mine which is subject to this chapter, authorized representatives of the department find that the conditions or practices in the mine are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated, such representatives shall determine the extent of the area of such mine throughout which the danger exists and thereupon issue an order requiring the operator of such mine to cause all persons to be withdrawn from and to be debarred from entering such area, except the persons designated below whose presence in such area is necessary to eliminate the danger described in such order:

(1) any person whose presence in such area is necessary in the judgment of the operator of the mine to eliminate the danger described in the order;

(2) any public official whose official duties require him to enter such area;

(3) any legal or technical consultant or any representative of the employees of the mine who is a person qualified to make mine examinations or is accompanied by such a person and whose presence in such area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order.

History: **En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(c); amd. Sec. 64, Ch. 613, L. 1989.**

Cross-References

Open mine shaft — criminal penalty, 45-8-113.

50-72-205. Procedure when noncompliance not likely to cause death or serious injury. (1) If, upon any inspection or investigation, an authorized representative finds that there has been a failure to comply with a mandatory standard which is applicable to such mine, but that such failure to comply has not created a danger that could reasonably be expected to cause death or serious physical harm in such mine immediately or before the imminence of such danger can be eliminated, he shall find what would be a reasonable period of time within which such violation should be totally abated and thereupon issue a notice fixing a reasonable time for the abatement of the violation.

(2) If, upon the expiration of such period of time as originally fixed or extended, the authorized representative finds that such violation has not been totally abated and if he also finds that such period of time should not be further extended, he shall also find the extent of the area which is affected by such violation. Thereupon, the department shall make an order requiring the operator of such mine to cause all persons in such area to be withdrawn from and to be debarred from entering such area, excepting the following persons whose presence in such area is necessary to abate the violation described in the order:

(a) any person whose presence in such area is necessary in the judgment of the operator of the mine to abate the violation described in the order;

(b) any public official whose official duties require him to enter such area;

(c) any legal or technical consultant or any representative of the employees of the mine who is a person qualified to make examinations or is accompanied by such a person and whose presence in such area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order.

History: **En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(d); amd. Sec. 64, Ch. 613, L. 1989.**

50-72-206. Requirements as to findings, notices, and orders. (1) Findings and orders issued pursuant to this part shall contain a detailed description of the conditions or practices which cause and constitute a situation of imminent danger or a violation of a mandatory standard and a description of the area of the mine throughout which persons must be withdrawn and debarred.

(2) Each finding made and notice or order issued under this part shall be given promptly to the operator of the mine to which it pertains by the person making such finding or order, and all such findings, orders, and notices shall be in writing and shall be signed by the person making them.

History: **En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(part).**

50-72-207. Notice or order subject to annulment, cancellation, or revision. A notice or order issued by an authorized representative pursuant to this part may be annulled, canceled, or revised by the authorized representative, and in case of a department order, the department may annul, cancel, or revise the order.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(part); amd. Sec. 64, Ch. 613, L. 1989.

50-72-208. Order subject to review. The order of the duly authorized representative of the department shall remain in effect but shall immediately be subject to review as provided in this chapter.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(g); amd. Sec. 64, Ch. 613, L. 1989.

50-72-209. Right to hearing. (1) An operator notified of an order made pursuant to 50-72-204 may apply to the department for a hearing, revision, or annulment of such order. Whenever the department after such a hearing, upon complaint or upon its own motion, finds that danger throughout the area of such mine as set out in such order existed at the time of making the inspection, it shall make an order denying a revision or annulment; but if it finds that such danger did not exist throughout the area of such mine, it shall make an order consistent with its findings revising or annulling the order under review.

(2) An operator notified of an order made pursuant to 50-72-205 may apply to the department for a hearing or revision of such order. If the department finds that there was no violation, it shall make an order annulling the order under review. If the department finds that there was such a violation, but such violation has since been abated, it shall make an order annulling the order under review. If the department finds that such violation was not totally abated, it shall make an order consistent with its findings.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(h), (i); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

50-72-210. Actions or decisions under part to be taken as rapidly as possible. In view of the urgent need for prompt decisions of matters submitted to the department under this part, all actions which the department or its authorized representatives are required to take under this part shall be taken as rapidly as practical, consistent with adequate consideration of the issues involved.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(j); amd. Sec. 64, Ch. 613, L. 1989.

CHAPTER 73

SAFETY IN COAL MINES

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Part 1
General Provisions

Part Cross-References

Workers' compensation, Title 39, ch. 71.

Occupational Disease Act of Montana, Title 39, ch. 72.

Silicosis benefits, Title 39, ch. 73.

50-73-101. Short title. This chapter shall be known and may be cited as the "Montana Coal Mining Code".

History: En. Sec. 1, Ch. 120, L. 1911; re-en. Sec. 3447, R.C.M. 1921; re-en. Sec. 3447, R.C.M. 1935; amd. Sec. 1, Ch. 267, L. 1974; R.C.M. 1947, 50-401.

50-73-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of labor and industry and the state coal mine inspectors employed by the department.

(2) "Excavations" and "workings" mean all parts of a mine excavated or being excavated, including shafts, slopes, tunnels, entries, rooms, and working places, whether abandoned or in use.

(3) "Gassy mine" means a mine is considered to be potentially gassy. The department may further define this term in its rules.

(4) "Mine" and "coal mine" mean all parts of the property of a mining plant under one management which contribute, directly or indirectly, to the mining or handling of coal.

(5) "Mine examiner" means a person charged with the examination of the condition of the mine before the miners are permitted to enter it and who is commonly known as the "fire boss".

(6) "Mine foreman" means a person who is charged with the general direction of the underground work or both the underground work and the outside work of a coal mine and who is commonly known and designated as "mine boss".

(7) "Operator", as applied to the party in control of a mine under this chapter, means the person, firm, or body corporate which is the immediate proprietor as owner or lessee of the plant and, as such, is responsible for the condition and management thereof.

(8) "Shaft" means any vertical opening through the strata which is or may be used for the purpose of ventilation or escape or for hoisting or lowering of men or material in connection with the mining of coal.

(9) "Slope" and "drift" mean respectively an incline or horizontal way, opening, or tunnel to a seam of coal to be used for the same purpose as a shaft.

History: En. 50-401.1 by Sec. 2, Ch. 267, L. 1974; R.C.M. 1947, 50-401.1; amd. Sec. 109, Ch. 370, L. 1987; amd. Sec. 49, Ch. 613, L. 1989.

50-73-103. Department authorized to adopt rules. The department may adopt rules to carry out the provisions of this chapter and safety standards for all coal mines in this state.

History: En. 50-412.1 by Sec. 8, Ch. 267, L. 1974; R.C.M. 1947, 50-412.1; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-73-104. Injunction and other civil relief authorized. A civil action for preventive relief, including but not limited to an application for a permanent or temporary injunction, restraining order, or other appropriate order, may be instituted by the department in the district court for the county in which the mine in question is located or in which the mine operator has its principal office when an operator:

(1) violates or fails or refuses to comply with an order, rule, or standard adopted under this chapter;

(2) interferes with, hinders, or delays the department or its authorized representatives in carrying out any duties under this chapter;

(3) refuses to admit an authorized representative of the department to a mine which is subject to this chapter;

(4) refuses to permit the inspection or investigation of a mine or an accident, injury, or occupational disease occurring in or connected with a mine; or

(5) refuses to furnish the department any information or report requested by the department and which may reasonably be necessary to carry out the provisions of this chapter.

History: En. Sec. 50-481 by Sec. 32, Ch. 267, L. 1974; R.C.M. 1947, 50-481(1); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Injunctions, Title 27, ch. 19.

50-73-105. Violations a misdemeanor. (1) A person who knowingly:

(a) violates or fails or refuses to comply with an order, rule, or standard adopted under this chapter;

(b) interferes with, hinders, or delays the department or its authorized representatives in carrying out any duties under this chapter;

(c) refuses to admit an authorized representative of the department to a mine;

(d) refuses to permit the inspection or investigation of a mine or an accident, injury, or occupational disease occurring in or connected with a mine; or

(e) refuses to furnish the department any information or report requested by the department and which may reasonably be necessary to carry out the provisions of this chapter is guilty of a misdemeanor and shall be punished for each offense by a fine of not less than $100 or more than $3,000, by imprisonment in the county jail not exceeding 6 months, or both.

(2) In an instance in which the offense is committed by a corporation, an officer or authorized representative of the corporation who knowingly permits the offense to be committed is subject to the same fine or imprisonment, or both.

History: En. Sec. 50-481 by Sec. 32, Ch. 267, L. 1974; R.C.M. 1947, 50-481(2); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Part 2
Maps, Surveys, and Boundary Lines

Part Cross-References

Workers' compensation, Title 39, ch. 71.

Occupational Disease Act of Montana, Title 39, ch. 72.

Silicosis benefits, Title 39, ch. 73.

50-73-201. Operator to make map of coal mine. Every operator of every coal mine in this state shall make or cause to be made an accurate map or plan of the mines, drawn to a scale of not less than 200 feet to 1 inch and as much larger as practicable, on which shall appear the name of the state, county, and township in which the mine is located, the designation of the mine, the name of the company or owner, the certificate of the certified engineer or surveyor as to the accuracy and date of the survey, the north point, and the scale to which the drawing is made.

History: En. Sec. 37, Ch. 120, L. 1911; re-en. Sec. 3479, R.C.M. 1921; re-en. Sec. 3479, R.C.M. 1935; amd. Sec. 9, Ch. 267, L. 1974; R.C.M. 1947, 50-428.

50-73-202. Map of the surface. Every map or plan or, at the option of the operator, a separate map shall show the surface boundary lines contiguous to the workings and pertaining to each mine, all section or quarter-section lines and corners, town lots and streets, the tracts and side tracts of all railroads, the location of all wagon roads, rivers, streams, ponds, buildings, landmarks, and principal objects on the surface within the boundary lines; and in all cases, if of an underground mine, it shall be drawn on a transparency so that it can be laid upon the map of the underground workings and indicate the relative location of the lines and objects on the surface to the excavations of the mine.

History: En. Sec. 40, Ch. 120, L. 1911; re-en. Sec. 3482, R.C.M. 1921; re-en. Sec. 3482, R.C.M. 1935; amd. Sec. 12, Ch. 267, L. 1974; R.C.M. 1947, 50-431.

50-73-203. Map of underground working. For the underground working, the map shall show all power distribution and ventilation in mines and all shafts, slopes, tunnels, or other openings to the surface or to the workings of a contiguous mine; all excavations, entries, rooms, and crosscuts; the rise or dip of the seam from the bottom of the shaft, mouth of drift, or slope in either direction to the face of the workings; the location of the fan; the location of the permanent pumps, hauling engines, engine-planes, and fire walls; the location of any standing water which might prove a menace to life or danger to property from flood; and the line of any contiguous surface outcrop of the seam.

History: En. Sec. 38, Ch. 120, L. 1911; re-en. Sec. 3480, R.C.M. 1921; re-en. Sec. 3480, R.C.M. 1935; amd. Sec. 13, Ch. 185, L. 1949; amd. Sec. 10, Ch. 267, L. 1974; amd. Sec. 7, Ch. 39, L. 1977; R.C.M. 1947, 50-429.

50-73-204. Map for every seam. A separate and similar map for all active mining areas drawn to the same scale in all cases shall be made of every seam which shall be worked in any mine, and the maps of all seams shall show all shafts, drifts, tunnels, incline planes, or other passageways connecting them.

History: En. Sec. 39, Ch. 120, L. 1911; re-en. Sec. 3481, R.C.M. 1921; re-en. Sec. 3481, R.C.M. 1935; amd. Sec. 11, Ch. 267, L. 1974; R.C.M. 1947, 50-430.

50-73-205. Copies of maps for department. The original or true copies of all maps shall be kept in the office at the mine, and true copies shall also be furnished the department within 30 days after their completion. The maps delivered to the department shall become the property of the state. They shall be kept at the office of the department and be open to inspection by all persons interested in them. An examination shall only be made in the presence of a department inspector, and he shall not permit any copies of them to be made without the written consent of the operator or owner of the property, under penalty of removal from office.

History: En. Sec. 41, Ch. 120, L. 1911; re-en. Sec. 3483, R.C.M. 1921; re-en. Sec. 3483, R.C.M. 1935; amd. Sec. 13, Ch. 267, L. 1974; R.C.M. 1947, 50-432; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

50-73-206. Maps to be updated on basis of semiannual surveys. An extension of the last preceding survey of every mine in active operation shall be made once every 6 months, and the result of the survey, with the date, shall be promptly and accurately entered upon the original maps so as to show all changes in plan or new work in the mine and all extensions of the workings to the most advanced boundary of the workings which have been made since the preceding survey. The changes and extensions shall be entered on the copies of the maps of the department or new copies furnished it within 30 days after the last survey is made.

History: En. Sec. 42, Ch. 120, L. 1911; re-en. Sec. 3484, R.C.M. 1921; re-en. Sec. 3484, R.C.M. 1935; amd. Sec. 14, Ch. 185, L. 1949; amd. Sec. 14, Ch. 267, L. 1974; R.C.M. 1947, 50-433(part); amd. Sec. 64, Ch. 613, L. 1989.

50-73-207. Annual surveys in mines having only five men on shift. The department shall require an extension of the last preceding survey once every 12 months of every mine in active operation in which five men or less are employed on any one shift.

History: En. Sec. 42, Ch. 120, L. 1911; re-en. Sec. 3484, R.C.M. 1921; re-en. Sec. 3484, R.C.M. 1935; amd. Sec. 14, Ch. 185, L. 1949; amd. Sec. 14, Ch. 267, L. 1974; R.C.M. 1947, 50-433(2); amd. Sec. 64, Ch. 613, L. 1989.

50-73-208. Final survey and map update when mine abandoned or worked out. (1) When a coal mine is worked out, is about to be abandoned, or indefinitely closed, the operator shall make or cause to be made a final survey of all available parts of the mine, and the results shall be duly extended on all maps and copies of the mine to show all excavations and the most advanced workings of the mine and their exact relations to the boundary or section lines on the surface.

(2) The department may order a survey to be made of the workings of a mine which is about to be abandoned or of which it has reason to believe the maps are inaccurate whenever in its judgment the safety of the workers, the support of the surface, the conservation of the property, or the safety of an adjoining mine requires it. The survey shall be at the expense of the state.

History: En. Sec. 43, Ch. 120, L. 1911; re-en. Sec. 3485, R.C.M. 1921; re-en. Sec. 3485, R.C.M. 1935; amd. Sec. 15, Ch. 267, L. 1974; R.C.M. 1947, 50-434; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Coal mine reclamation, Title 82, ch. 4, parts 1 and 2.

50-73-209. Procedure when operator fails to furnish or update map. When the operator of a mine neglects or refuses or for any cause not satisfactory to the department fails for a period of 3 months to furnish the department the map or plan of the mine or of the extension or a copy, the department may make or cause to be made an accurate map or plan of the mine at the expense of the owner or lessee, and the cost may be recovered from the owner, lessee, or operator in the same manner as other debts by suit in the name of the state.

History: En. Sec. 42, Ch. 120, L. 1911; re-en. Sec. 3484, R.C.M. 1921; re-en. Sec. 3484, R.C.M. 1935; amd. Sec. 14, Ch. 185, L. 1949; amd. Sec. 14, Ch. 267, L. 1974; R.C.M. 1947, 50-433(part); amd. Sec. 64, Ch. 613, L. 1989.

50-73-210. Restrictions as to boundary lines. In no case shall the workings of a coal mine be driven nearer than 50 feet to the boundary line of the coal rights pertaining to the mine, except for the purpose of establishing connecting workings between properties owned by the same person or an underground communication between contiguous mines as provided for elsewhere in rules adopted by the department.

History: En. 50-434.1 by Sec. 16, Ch. 267, L. 1974; R.C.M. 1947, 50-434.1; amd. Sec. 64, Ch. 613, L. 1989.

Part 3

Duties of Operator and Employees in Mine Operation

Part Cross-References

Workers' compensation, Title 39, ch. 71.

Occupational Disease Act of Montana, Title 39, ch. 72.

Silicosis benefits, Title 39, ch. 73.

50-73-301. Operator to report amount of coal produced. Within 15 days after the close of each calendar month, the operator of a coal mine shall report to the department the tons of coal produced each day during the preceding month.

History: En. 50-477 by Sec. 20, Ch. 267, L. 1974; R.C.M. 1947, 50-477(part); amd. Sec. 64, Ch. 613, L. 1989.

50-73-302. Hoisting — licensing of hoisting engineers. Hoisting of personnel and licensing of hoisting engineers shall be performed in mines under the provisions of the law and rules and standards adopted by the department.

History: En. 50-479 by Sec. 22, Ch. 267, L. 1974; R.C.M. 1947, 50-479; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Hoisting engines, Title 50, ch. 76.

50-73-303. Nonpermissible internal-combustion engines. Nonpermissible internal-combustion engines or other machinery which gives off noxious fumes may not be permitted underground in any coal mine.

History: En. 50-567.1 by Sec. 17, Ch. 267, L. 1974; R.C.M. 1947, 50-467.1.

50-73-304. Owner to provide and maintain airways. The owner, lessee, or operator of every coal mine shall provide and maintain airways of sufficient dimensions, and in no case shall the area of the aircourse be less than 25 square feet in mines operated in any underground system.

History: En. Sec. 69, Ch. 120, L. 1911; re-en. Sec. 3511, R.C.M. 1921; re-en. Sec. 3511, R.C.M. 1935; amd. Sec. 18, Ch. 267, L. 1974; R.C.M. 1947, 50-468.

50-73-305. Specific prohibitions and safety precautions. (1) A person may not enter a mine which is generating firedamp in great enough quantities to be detected by a safety lamp until the mine examiners make a report to the department.

(2) A person, unless accompanied by the mine examiner, may not go beyond a danger signal until all standing gas discovered has been removed or diluted and rendered harmless by a current of air. A person ordered to withdraw by the mine foreman or mine examiner from the mine on account of the interruption of the ventilation may not reenter the mine until given permission to do so by the mine foreman.

(3) A person other than the mine examiner may not remove any caution board or danger signal placed at the entrance to any working place or at the entrance to any old workings in a mine.

(4) A person may not erase or change a mark of reference or monument made in connection with a measurement, change marks or dates on any caution board, erase or change the dates at room or entry face when made by the mine examiner, take for his use a life check not issued to him under rules adopted by the department, change the checks on cars, wrongfully check a car, or do any act with intent to defraud.

(5) A person may not take anything containing fire into an underground mine, except as provided for in rules adopted by the department.

(6) A person may not place refuse in or obstruct an airway or breakthrough used as an airway. A worker or other person may not damage or alter a water gauge, barometer, aircourse, brattice equipment, machinery, or livestock, obstruct or throw open any airway, handle or disturb any part of the machinery of the hoisting engine of a mine, open a door of a mine and neglect to close it, endanger the miners or those working therein, disobey an order given in pursuance of law, or do a willful act endangering the lives or health of persons working there or the security of a mine or machinery.

History: En. 50-476 by Sec. 19, Ch. 267, L. 1974; amd. Sec. 8, Ch. 39, L. 1977; R.C.M. 1947, 50-476; amd. Sec. 64, Ch. 613, L. 1989.

50-73-306. Operator to give notice of happening of certain occurrences. Immediate notice must be conveyed to the department by the operator interested:

(1) when an accident occurs whereby a person receives serious or fatal injury;

(2) when work is commenced to sink a shaft, slope, or drift either for hoisting or escape purposes;

(3) when there is intent to abandon a mine or to reopen an abandoned mine;

(4) upon the appearance of a large body of firedamp in a mine, whether accompanied by explosion or not, and upon the occurrence of a serious fire within the mine or on the surface around the mine;

(5) when the workings of a mine are approaching near an abandoned mine believed to contain accumulation of water or gas; or

(6) upon the accidental closing or intended abandonment of a regularly established passageway to an escape outlet.

History: En. 50-477 by Sec. 20, Ch. 267, L. 1974; R.C.M. 1947, 50-477(part); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Coal mine reclamation, Title 82, ch. 4, parts 1 and 2.

50-73-307. Operator to make and preserve a record of all injuries. Every operator of a coal mine or his agent shall make and preserve for the information of the department, upon uniform blanks furnished by the department, a record of all injuries sustained by any employees on the premises.

History: En. 50-478 by Sec. 21, Ch. 267, L. 1974; R.C.M. 1947, 50-478(part); amd. Sec. 64, Ch. 613, L. 1989.

50-73-308. Operator to notify miners' organization of mine fatality. The operator shall, upon being notified of a fatality in a coal mine, relay that information promptly to the district office of the miners' organization.

History: En. 50-478 by Sec. 21, Ch. 267, L. 1974; R.C.M. 1947, 50-478(part).

Part 4

Inspections, Investigations, and Compliance

Part Cross-References

Workers' compensation, Title 39, ch. 71.

Occupational Disease Act of Montana, Title 39, ch. 72.

Silicosis benefits, Title 39, ch. 73.

50-73-401. Coal mine inspector. (1) The department shall employ an adequate number of qualified coal mine inspectors for the enforcement of this chapter and shall prescribe their duties.

(2) A person is not eligible to be a state coal mine inspector unless he is a citizen of the United States, a resident of this state, and has been actually employed in coal mining 5 years before his appointment.

(3) A state coal mine inspector may not act as agent for a corporation, superintendent, or manager of a mine and shall in no manner be in the employ of mining companies, nor shall he be interested in any way in coal mining operations, either as owner, lessee, or otherwise.

History: (1)En. Sec. 2, Ch. 120, L. 1911; amd. Sec. 1, Ch. 20, L. 1921; re-en. Sec. 3448, R.C.M. 1921; re-en. Sec. 3448, R.C.M. 1935; amd. Sec. 3, Ch. 267, L. 1974; Sec. 50-402, R.C.M. 1947; (2)En. Sec. 3, Ch. 120, L. 1911; re-en. Sec. 3449, R.C.M. 1921; re-en. Sec. 3449, R.C.M. 1935; amd. Sec. 1, Ch. 185, L. 1949; amd. Sec. 4, Ch. 267, L. 1974; Sec. 50-403, R.C.M. 1947; (3)En. Sec. 6, Ch. 120, L. 1911; re-en. Sec. 3451, R.C.M. 1921; re-en. Sec. 3451, R.C.M. 1935; amd. Sec. 6, Ch. 267, L. 1974; Sec. 50-405, R.C.M. 1947; R.C.M. 1947, 50-402, 50-403, 50-405; amd. Sec. 1, Ch. 639, L. 1983; amd. Sec. 64, Ch. 613, L. 1989.

50-73-402. Department authorized to enter and inspect coal mines. (1) The department may enter, inspect, and examine any coal mine or any shaft, drift, or slope in the process of sinking for the purpose of mining coal in this state and the workings and the machinery belonging thereto at all reasonable times either by day or night, but not so as to impede or obstruct the workings of the mine.

(2) The department may at any time perform such inspections and investigations as it considers necessary in surface and underground mines which are subject to this chapter for the purpose of obtaining, utilizing, and disseminating information relating to health and safety conditions in the mines, the causes of accidents involving bodily injury or loss of life, or the causes of occupational diseases originating therein and for the purpose of determining

whether there is compliance with a health and safety standard or order issued under this chapter.

(3) For the purpose of making an inspection or investigation authorized by this chapter, representatives of the department may enter, upon or through, any mine which is subject to this chapter.

History: (1)En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; Sec. 50-404, R.C.M. 1947; (2), (3)En. 50-480, 50-480.1 by Secs. 23, 24, Ch. 267, L. 1974; Secs. 50-480, 50-480.1, R.C.M. 1947; R.C.M. 1947, 50-404(1), 50-480, 50-480.1; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-73-403. Department to give notice of inspection to be made on complaint. If the department has in its possession any complaint to the effect that this chapter is being violated, it shall notify the employer and the employees that it is about to make an inspection.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; R.C.M. 1947, 50-404(part); amd. Sec. 64, Ch. 613, L. 1989.

50-73-404. Right of employees' representative and mine owner to accompany department during inspection. The employees' representative has the right to accompany the department in making an official mine inspection. The owner or operator has the right to personally accompany the department while inspecting his property or to designate someone to accompany the department.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; R.C.M. 1947, 50-404(part); amd. Sec. 64, Ch. 613, L. 1989.

50-73-405. Mine owner to furnish means necessary for inspection. The owner, lessee, operator, superintendent, or mining boss of the mine is required to furnish the means necessary for the entry, inspection, examination, inquiry, and exit.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; R.C.M. 1947, 50-404(part).

50-73-406. Minimum inspection intervals. The department shall carefully examine all the coal mines in operation in this state at least every 3 months and more often if necessary to see that every precaution is taken to insure the safety of all workers that may be engaged in the coal mine. The department shall make a record of the visit, noting the time and the material circumstances of the inspection.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; R.C.M. 1947, 50-404(part); amd. Sec. 64, Ch. 613, L. 1989.

50-73-407. Department to give notice of violations and penalties therefor. The department shall immediately notify the owner, lessee, superintendent, or mining boss of the discovery of any violation of the mining laws of this state and the penalty thereby imposed for those violations.

History: **En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; R.C.M. 1947, 50-404(part); amd. Sec. 64, Ch. 613, L. 1989.**

50-73-408. Procedure when notice of violations disregarded. (1) If the notice provided for in 50-73-407 is disregarded, the department may stop immediately the working and operation of any mine or any part thereof where any dangerous or unlawful conditions are found.

(2) However, where conditions justify the department in so doing, it may grant a reasonable length of time for making repairs or for putting the mine in proper condition, but the number of workers employed in the mine or in the section of the mine involved shall be limited to those necessary to correct the unsafe condition.

(3) Where any stops or cessation of work is enforced, the department may thereafter allow the mine or part of a mine to be reopened when the dangerous or unlawful conditions existing there are removed or remedied so that they no longer exist.

History: **En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; R.C.M. 1947, 50-404(part); amd. Sec. 64, Ch. 613, L. 1989.**

Cross-References

Injunctions, Title 27, ch. 19.

50-73-409. Department to post statement of conditions at some conspicuous location. The department shall post in some conspicuous location at each mine visited and inspected by it a plain statement of the conditions of the mine showing what in its judgment is necessary for the better protection of the lives and health of persons employed in the mine. The statement, signed by the department inspector, shall give the date of inspection. Where a local union has jurisdiction over the mine inspected, the department shall post three copies of the statement of conditions within 1 week after making the inspection. It shall also post a copy at the landing used by the workers stating what number of workers may be permitted to ride on the cage, car, or cars at one time.

History: **En. Sec. 8, Ch. 120, L. 1911; re-en. Sec. 3453, R.C.M. 1921; re-en. Sec. 3453, R.C.M. 1935; amd. Sec. 3, Ch. 38, L. 1945; amd. Sec. 3, Ch. 185, L. 1949; amd. Sec. 7, Ch. 267, L. 1974; R.C.M. 1947, 50-407; amd. Sec. 64, Ch. 613, L. 1989.**

50-73-410. Department inspection upon advisement of accident, injury, or fatality. (1) When advised by an operator of any accident in a coal mine involving loss of life or serious personal injury, the department shall, if it considers it necessary from the facts reported and in all cases of loss of life, immediately have an inspector go to the scene of the accident within 48 hours of notification.

(2) The department may also make any original or supplementary investigation which it considers necessary as to the nature and cause of an accident and shall make a record of the circumstances and of the result of the investigations for its files.

(3) The inspection team shall include a department coal mine inspector, the employer or his designee, and a representative of the employees.

History: En. 50-478 by Sec. 21, Ch. 267, L. 1974; R.C.M. 1947, 50-478(part); amd. Sec. 64, Ch. 613, L. 1989.

50-73-411. Miners' organization authorized to investigate fatal accident. The representative of the miners' organization or some person delegated by him may enter any coal mine for the purpose of investigating the causes of a fatal accident.

History: En. 50-478 by Sec. 21, Ch. 267, L. 1974; R.C.M. 1947, 50-478(part).

50-73-412. Debarment of persons from mine when death or serious injury likely. If, upon an inspection of a mine, the department finds that the conditions or practices in the mine are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the danger can be eliminated, the department shall determine the extent of the area of the mine throughout which the danger exists and order the operator of the mine to have all persons withdrawn from and excluded from entering the area, except the persons designated below whose presence in the area is necessary to eliminate the danger described in the order:

(1) a person whose presence in the area is necessary in the judgment of the operator of the mine to eliminate the danger;

(2) a public official whose official duties require him to enter the area;

(3) a legal or technical consultant or a representative of the employees of the mine who is a person qualified to make mine examinations or is accompanied by such a person and whose presence in the area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions in the area.

History: En. 50-480.2 by Sec. 25, Ch. 267, L. 1974; R.C.M. 1947, 50-480.2; amd. Sec. 64, Ch. 613, L. 1989.

50-73-413. Procedure when noncompliance not likely to cause death or serious injury. If upon an inspection or investigation the department finds that there has been a failure to comply with a mandatory standard which is applicable to the mine, but that the failure to comply has not created a danger that could reasonably be expected to cause death or serious physical harm in the mine immediately or before the imminence of the danger can be eliminated, it shall determine what would be a reasonable period of time within which the violation should be totally abated and issue a notice fixing a reasonable time for the abatement of the violation. If, upon the expiration of the period of time as originally fixed or extended, the department finds that the violation has not been totally abated and if it also finds that the period of time should not be further extended, it shall also find the extent of the area which is affected by the violation. The department shall order the operator of the mine to have all persons in the area to be withdrawn from and excluded from entering the area, excepting the following persons whose presence in the area is necessary to abate the violation described in the order:

(1) a person whose presence in the area is necessary in the judgment of the operator of the mine to abate the violation;

(2) a public official whose official duties require him to enter the area;

(3) a legal or technical consultant or a representative of the employees of the mine who is a person qualified to make examinations or is accompanied by such a person and whose presence in the area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions in the area.

History: En. 50-480.3 by Sec. 26, Ch. 267, L. 1974; R.C.M. 1947, 50-480.3; amd. Sec. 64, Ch. 613, L. 1989.

50-73-414. Requirements as to findings, notices, and orders. (1) Findings and orders issued under this chapter shall contain a detailed description of the conditions or practices which cause and constitute a situation of imminent danger or a violation of a mandatory standard and a description of the area of the mine throughout which persons must be withdrawn and excluded.

(2) Each finding made and notice or order issued by the department shall be given promptly to the operator of the mine to which it pertains, and all the findings, orders, and notices shall be in writing and shall be signed by the department inspector making them.

History: En. 50-484.4 by Sec. 27, Ch. 267, L. 1974; R.C.M. 1947, 50-480.4(part); amd. Sec. 64, Ch. 613, L. 1989.

50-73-415. Notice or order subject to amendment, cancellation, or revision. A notice or order issued by the department under this chapter may be amended, canceled, or revised by the department.

History: En. 50-484.4 by Sec. 27, Ch. 267, L. 1974; R.C.M. 1947, 50-480.4(part); amd. Sec. 64, Ch. 613, L. 1989.

50-73-416. Order subject to review. The order of the department shall remain in effect but shall immediately be subject to review as provided in this chapter.

History: En. 50-480.5 by Sec. 28, Ch. 267, L. 1974; R.C.M. 1947, 50-480.5; amd. Sec. 64, Ch. 613, L. 1989.

50-73-417. Right to hearing. (1) An operator notified of an order made under 50-73-412 may apply to the department for a hearing, revision, or amendment of the order. When the department after a hearing upon complaint or upon its own motion finds that danger throughout the area of the mine as set out in the order existed at the time of making the inspection, it shall make an order denying a revision or amendment. However, if it finds that the danger did not exist throughout the area of the mine, it shall make an order consistent with its findings, revising or amending the order under review.

(2) An operator notified of an order made under 50-73-413, as amended, may apply to the department for a hearing or revision of the order. If the department finds that there was no violation, it shall make an order rescinding the order under review. If the department finds that there was a violation but the violation has since been abated, it shall make an order rescinding the order under review. If the department finds that the violation was not totally abated, it shall make an order consistent with its findings.

History: (1)En. 50-480.6 by Sec. 29, Ch. 267, L. 1974; Sec. 50-480.6, R.C.M. 1947; (2)En. 50-480.7 by Sec. 30, Ch. 267, L. 1974; amd. Sec. 9, Ch. 39, L. 1977; amd. Sec. 5, Ch. 187, L. 1977; Sec. 50-480.7, R.C.M. 1947; R.C.M. 1947, 50-480.6, 50-480.7; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Contested case defined — applicability of Montana Administrative Procedure Act, 2-4-102.

50-73-418. Actions or decisions under chapter to be taken as rapidly as possible. In view of the urgent need for prompt decisions of matters submitted to the department under this chapter, all actions which the department is required to take under this chapter shall be taken as rapidly as practicable, consistent with adequate consideration of the issues involved.

History: En. 50-480.8 by Sec. 31, Ch. 267, L. 1974; R.C.M. 1947, 50-480.8; amd. Sec. 64, Ch. 613, L. 1989.

CHAPTER 74

BOILERS AND STEAM ENGINES

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Part 1
General Provisions

Part Cross-References

Municipal power to regulate steam boiler location, 7-21-4204.

Municipal power to inspect and regulate boilers, 7-33-4204.

Workers' compensation, Title 39, ch. 71.

50-74-101. Definition — department to formulate rules. (1) As used in this chapter, the term "department" means the department of commerce.

(2) The department shall adopt definitions and rules for the safe construction, installation, operation, inspection, and repair of equipment covered by this chapter. The definitions and rules must follow generally accepted nationwide engineering standards as published by the American society of mechanical engineers.

History: En. Sec. 550, Pol. C. 1895; re-en. Sec. 1639, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1913; amd. Sec. 1, Ch. 12, L. 1921; re-en. Sec. 2712, R.C.M. 1921; re-en. Sec. 2712, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1967; amd. Sec. 1, Ch. 225, L. 1971; amd. Sec. 25, Ch. 182, L. 1975; amd. Sec. 1, Ch. 152, L. 1977; R.C.M. 1947, 69-1501(1); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 12, Ch. 514, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-74-102. Boilers to conform to rules. No boiler which does not conform to the rules adopted by the department governing new construction and installation shall be installed and operated in this state after 12 months from the date upon which the first rules under this chapter pertaining to new construction and installation shall have become effective unless the boiler is of special design or construction, is not covered by the rules, or is in any way inconsistent with such rules, in which case a special installation and operating permit may be granted by the department at its discretion.

History: En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919, re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; R.C.M. 1947, 69-1503(3); amd. Sec. 64, Ch. 613, L. 1989.

50-74-103. Boilers exempted. (1) This chapter shall not apply to boilers under federal control.

(2) The provisions of this chapter requiring inspections, inspection fees, and certificates shall not apply to steam heating boilers operated at not over 15 pounds per square inch gauge pressure in private residences or apartments of six or less families or to hot water heating or supply boilers operated at not

over 50 pounds per square inch gauge pressure and temperatures not over 250 degrees F when in private residences or apartments of six or less families.

(3) No persons operating any of the engines or boilers exempted from the operation of this chapter shall be required to procure a license from the department.

History: En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R.C.M. 1921; amd. Sec. 1, Ch. 140, L. 1923; re-en. Sec. 2726, R.C.M. 1935; amd. Sec. 4, Ch. 77, L. 1967; amd. Sec. 14, Ch. 225, L. 1971; amd. Sec. 33, Ch. 182, L. 1975; R.C.M. 1947, 69-1515(part); amd. Sec. 64, Ch. 613, L. 1989.

50-74-104. Dinkey engines to be classed as traction engines. Locomotives, commonly known as dinkey engines, used in operating logging or mining railroads or any similar work where such locomotives are owned, leased, or operated by any individual, company, or corporation and are used in the business of such individual, company, or corporation and not for general commercial purposes shall be classed as traction engines and be subject to inspection as are other traction engines, and the persons operating or firing such dinkey locomotives shall be required to hold traction licenses.

History: En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R.C.M. 1921; amd. Sec. 1, Ch. 140, L. 1923; re-en. Sec. 2726, R.C.M. 1935; amd. Sec. 4, Ch. 77, L. 1967; amd. Sec. 14, Ch. 225, L. 1971; amd. Sec. 33, Ch. 182, L. 1975; R.C.M. 1947, 69-1515(part).

50-74-105. Purchaser to notify department of purchase. (1) Any person purchasing any boiler, whether traction or stationary, not exempted by the provisions of 50-74-103 shall, within 10 days after such purchase, report the fact of such purchase to the department and shall notify the department as to where the boiler will be installed and operated.

(2) Any person failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor.

History: En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R.C.M. 1921; amd. Sec. 1, Ch. 140, L. 1923; re-en. Sec. 2726, R.C.M. 1935; amd. Sec. 4, Ch. 77, L. 1967; amd. Sec. 14, Ch. 225, L. 1971; amd. Sec. 33, Ch. 182, L. 1975; R.C.M. 1947, 69-1515(part); amd. Sec. 64, Ch. 613, L. 1989.

50-74-106. Certificate and license to be conspicuously displayed. All certificates of inspection, operating certificates, and engineer's licenses must be displayed in a conspicuous place in the boiler room.

History: En. Sec. 562, Pol. C. 1895; re-en. Sec. 1651, Rev. C. 1907; amd. Sec. 11, Ch. 30, L. 1913; re-en. Sec. 2722, R.C.M. 1921; re-en. Sec. 2722, R.C.M. 1935; amd. Sec. 10, Ch. 225, L. 1971; amd. Sec. 20, Ch. 513, L. 1973; R.C.M. 1947, 69-1511(part).

50-74-107. Wrongful certification or granting of a license a misdemeanor. Any inspector or assistant inspector who willfully certifies regarding any boilers or their attachments or grants a license to any person to act as engineer contrary to the provisions of this chapter is guilty of a misdemeanor.

History: En. Sec. 562, Pol. C. 1895; re-en. Sec. 1651, Rev. C. 1907; amd. Sec. 11, Ch. 30, L. 1913; re-en. Sec. 2722, R.C.M. 1921; re-en. Sec. 2722, R.C.M. 1935; amd. Sec. 10, Ch. 225, L. 1971; amd. Sec. 20, Ch. 513, L. 1973; R.C.M. 1947, 69-1511(part).

50-74-108. Tampering with safety valve a misdemeanor. A renter, user, or owner of a boiler or a person who tampers with the safety valve to allow the boiler to carry greater pressure than is allowed by the inspection certificate is guilty of a misdemeanor.

History: En. Sec. 555, Pol. C. 1895; re-en. Sec. 1644, Rev. C. 1907; amd. Sec. 6, Ch. 30, L. 1913; re-en. Sec. 2715, R.C.M. 1921; re-en. Sec. 2715, R.C.M. 1935; amd. Sec. 4, Ch. 225, L. 1971; amd. Sec. 9, Ch. 187, L. 1977; R.C.M. 1947, 69-1504(2).

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

Part 2
Inspections

Part Cross-References

Municipal power to regulate steam boiler location, 7-21-4204.

Municipal power to inspect and regulate boilers, 7-33-4204.

Workers' compensation, Title 39, ch. 71.

50-74-201. State boiler inspectors. The department shall appoint state inspectors of boilers and shall prescribe their duties and term of office and fix their compensation.

History: En. Sec. 550, Pol. C. 1895; re-en. Sec. 1639, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1913; amd. Sec. 1, Ch. 12, L. 1921; re-en. Sec. 2712, R.C.M. 1921; re-en. Sec. 2712, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1967; amd. Sec. 1, Ch. 225, L. 1971; amd. Sec. 25, Ch. 182, L. 1975; amd. Sec. 1, Ch. 152, L. 1977; R.C.M. 1947, 69-1501(2); amd. Sec. 64, Ch. 613, L. 1989.

50-74-202. Special boiler inspectors. (1) In addition to the state boiler inspectors, the department shall issue to the inspectors of boiler insurance companies authorized to do business in the state commissions, certificates, or other recognition as special boiler inspectors and may accept the inspection reports of such special inspectors as equivalent to those of the state inspectors.

(2) Each such special inspector shall hold a certificate as boiler inspector issued by the national board of boiler and pressure vessels inspectors.

(3) Such special inspectors shall receive no salary or expenses from the state, nor shall the state collect inspection fees for inspections made by such special inspectors.

History: En. Sec. 550, Pol. C. 1895; re-en. Sec. 1639, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1913; amd. Sec. 1, Ch. 12, L. 1921; re-en. Sec. 2712, R.C.M. 1921; re-en. Sec. 2712, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1967; amd. Sec. 1, Ch. 225, L. 1971; amd. Sec. 25, Ch. 182, L. 1975; amd. Sec. 1, Ch. 152, L. 1977; R.C.M. 1947, 69-1501(3); amd. Sec. 64, Ch. 613, L. 1989.

50-74-203. Qualifications of boiler inspectors. No person is eligible to hold the office of inspector of boilers and steam engines who has not had at least 10 years of actual experience in the operation of steam engines, steam boilers, and steam machinery and who has not held for at least 3 years immediately preceding his appointment a first-class stationary engineer's license of the state of Montana or who is directly or indirectly interested in the manufacture or sale of boilers or steam machinery or any patented article required to be sold relating thereto.

History: En. Sec. 2, p. 102, L. 1889; amd. Sec. 551, Pol. C. 1895; re-en. Sec. 1640, Rev. C. 1907; amd. Sec. 2, Ch. 30, L. 1913; re-en. Sec. 2713, R.C.M. 1921; amd. Sec. 2, Ch. 225, L. 1971; R.C.M. 1947, 69-1502.

50-74-204. Joint or separate inspection authorized — inspectors to certify inspection under seal. In making an inspection of the boilers and machinery herein provided for, the inspectors may act jointly or separately, but the inspector or assistant inspector making such inspection must in all cases certify the same under the seal of the inspector of boilers and safety.

History: En. Sec. 562, Pol. C. 1895; re-en. Sec. 1651, Rev. C. 1907; amd. Sec. 11, Ch. 30, L. 1913; re-en. Sec. 2722, R.C.M. 1921; re-en. Sec. 2722, R.C.M. 1935; amd. Sec. 10, Ch. 225, L. 1971; amd. Sec. 20, Ch. 513, L. 1973; R.C.M. 1947, 69-1511(part).

50-74-205. Purchaser to receive certificate of inspection. (1) Any person purchasing any boiler, whether traction or stationary, shall be entitled to receive from the seller the certificates of inspection issued on such boiler.

(2) Any person failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor.

History: En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R.C.M. 1921; amd. Sec. 1, Ch. 140, L. 1923; re-en. Sec. 2726, R.C.M. 1935; amd. Sec. 4, Ch. 77, L. 1967; amd. Sec. 14, Ch. 225, L. 1971; amd. Sec. 33, Ch. 182, L. 1975; R.C.M. 1947, 69-1515(part).

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

50-74-206. Boiler to be inspected prior to use — duty of notification. (1) The inspector of boilers must inspect all boilers and steam generators before the same are used.

(2) All persons who bring into this state for operation in this state any boiler or boilers must notify the department stating the number and kind of boilers and where they are to be located and operated in this state and must secure from the department a certificate of inspection before boilers are placed in operation except in the case of new boilers, which must be inspected within 90 days after they are put in use.

History: En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; R.C.M. 1947, 69-1503(part); amd. Sec. 64, Ch. 613, L. 1989.

50-74-207. Boiler opened for repair subject to inspection — duty of notification. Any owner, operator, or user who opens a boiler or boilers between inspections for repair or other reasons must notify the department of such action, and such boiler or boilers shall at the discretion of the department be inspected by the state or special boiler inspector before the boiler or boilers may be placed back in operation.

History: En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; R.C.M. 1947, 69-1503(part); amd. Sec. 64, Ch. 613, L. 1989.

50-74-208. Penalty for operation without certificate or failure to give notice. Any person failing to give notice to the department as provided in 50-74-206 or 50-74-207 or who operates such boilers without a certificate from the department shall be punished by a fine of not less than $100 or more than $500 for each offense, by imprisonment in the county jail for not less than 30 or more than 90 days, or by both such fine and imprisonment.

History: En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714,

R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; R.C.M. 1947, 69-1503(part); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Criminal responsibility of corporations, 45-2-311.

50-74-209. Required inspection intervals. (1) All boilers must be inspected at least once in every year except boilers exempt under provisions of 50-74-103. Upon written application, longer inspection intervals may be authorized by the department.

(2) In addition to the annual inspection, it is the duty of the inspectors to examine at proper times, when in their opinion such examination is necessary, all such boilers as shall have become unsafe from any cause and to notify the owner or the person using such boilers of any defect and what repairs are necessary to render them safe.

History: (1)En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; Sec. 69-1503, R.C.M. 1947; (2)En. Sec. 557, Pol. C. 1895; re-en. Sec. 1646, Rev. C. 1907; re-en. Sec. 2717, R.C.M. 1921; re-en. Sec. 2717, R.C.M. 1935; Sec. 69-1506, R.C.M. 1947; R.C.M. 1947, 69-1503(part), 69-1506; amd. Sec. 64, Ch. 613, L. 1989.

50-74-210. Duty to permit inspection. It is the duty of the owners, engineers, or managers of steam or water boilers to allow the inspector free access to the same.

History: En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913; re-en. Sec. 2718, R.C.M. 1921; re-en. Sec. 2718, R.C.M. 1935; amd. Sec. 6, Ch. 225, L. 1971; amd. Sec. 27, Ch. 182, L. 1975; R.C.M. 1947, 69-1507(part).

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-74-211. Inspector to notify department of refused access. In case the owner, operators, or manager of any boiler is notified by the inspector to have the boiler ready for inspection on a certain day and fails to have such boiler ready for inspection at such time, the inspector shall notify the department to gain access to the boiler.

History: En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913; re-en. Sec. 2718, R.C.M. 1921; re-en. Sec. 2718, R.C.M. 1935; amd. Sec. 6, Ch. 225, L. 1971; amd. Sec. 27, Ch. 182, L. 1975; R.C.M. 1947, 69-1507(part); amd. Sec. 64, Ch. 613, L. 1989.

50-74-212. Payment of costs resulting from refused access. The owner, engineer, or manager of any boiler who has refused access resulting in a department order must pay all transportation and hotel expenses of the inspector who makes the inspection directed by such order in addition to the inspection fee provided by law.

History: En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913; re-en. Sec. 2718, R.C.M. 1921; re-en. Sec. 2718, R.C.M. 1935; amd. Sec. 6, Ch. 225, L. 1971; amd. Sec. 27, Ch. 182, L. 1975; R.C.M. 1947, 69-1507(part); amd. Sec. 64, Ch. 613, L. 1989.

50-74-213. Failure to comply with department directed access a misdemeanor. Any person failing to immediately comply with department directed access to the boiler shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100 or more than $500, by imprisonment in the county jail for not less than 2 months or more than 6 months, or by both such fine and imprisonment.

History: **En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913; re-en. Sec. 2718, R.C.M. 1921; re-en. Sec. 2718, R.C.M. 1935; amd. Sec. 6, Ch. 225, L. 1971; amd. Sec. 27, Ch. 182, L. 1975; R.C.M. 1947, 69-1507(part); amd. Sec. 64, Ch. 613, L. 1989.**

Cross-References

Criminal responsibility of corporations, 50-72-104.

50-74-214. Engineer to assist in inspection. It shall be the duty of the engineer operating any boiler or boilers to assist the inspectors in their examination of the same and point out any defects known to him in the boilers or machinery under his charge. Any engineer not complying with this section shall have his license revoked or suspended.

History: **En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913; re-en. Sec. 2718, R.C.M. 1921; re-en. Sec. 2718, R.C.M. 1935; amd. Sec. 6, Ch. 225, L. 1971; amd. Sec. 27, Ch. 182, L. 1975; R.C.M. 1947, 69-1507(part).**

50-74-215. Interior and exterior examination of boiler. (1) The inspector must satisfy himself by a thorough interior and exterior examination that the boilers are well-made and of good and suitable material; that the openings for the passage of water and steam, respectively, and all pipes and tubes exposed to heat are of the proper dimensions and free from obstructions; that the flues are circular in shape; that the fire line of the furnace is at least 2 inches below prescribed minimum water line of the boilers; that the arrangements for delivering the feed water are such that the boilers cannot be injured thereby; and that such boilers and the steam connections may be safely employed without danger to life.

(2) No boiler or steam pipe or any of the connections thereto which are made in whole or in part of bad material or are unsafe from any cause shall be approved. Nothing herein shall be construed to prevent the use of any boiler or steam generator, which may not be constructed of riveted iron or steel plates, when the inspector has satisfactory evidence that such boiler or steam generator is equal in strength to and as safe from explosion as boilers of the best quality, constructed of iron or steel plates.

History: **(1)En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; Sec. 69-1503, R.C.M. 1947; (2)En. Sec. 556, Pol. C. 1895; re-en. Sec. 1645, Rev. C. 1907; re-en. Sec. 2716, R.C.M. 1921; re-en. Sec. 2716, R.C.M. 1935; amd. Sec. 5, Ch. 225, L. 1971; Sec. 69-1505, R.C.M. 1947; R.C.M. 1947, 69-1503(part), 69-1505.**

50-74-216. Hydrostatic pressure test. When necessary, the boiler inspector shall subject boilers, except those exempted by 50-74-103, to hydrostatic pressure, which hydrostatic pressure shall not exceed 150% of the steam pressure allowed on the boilers, providing there are no such leaks on such boilers which prevent the inspector from applying such hydrostatic pressure.

History: **En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; R.C.M. 1947, 69-1503(part).**

50-74-217. Other inspection requirements. The inspector must satisfy himself that:

(1) the safety valves are of suitable relieving capacity ratings, sufficient in number and area, and properly arranged and are properly adjusted so as not to allow a greater pressure in a boiler than the amount prescribed by the inspection certificate;

(2) there are a sufficient number of gauge cocks properly inserted to indicate the amount of water and suitable gauges that will correctly record the pressure of steam; and

(3) adequate and certain provisions for an ample supply of water to feed the boiler at all times and suitable means for blowing out are provided so as to thoroughly remove mud and sediment from all parts of the boiler when it is under pressure of steam.

History: En. Sec. 555, Pol. C. 1895; re-en. Sec. 1644, Rev. C. 1907; amd. Sec. 6, Ch. 30, L. 1913; re-en. Sec. 2715, R.C.M. 1921; re-en. Sec. 2715, R.C.M. 1935; amd. Sec. 4, Ch. 225, L. 1971; amd. Sec. 9, Ch. 187, L. 1977; R.C.M. 1947, 69-1504(1).

50-74-218. Safe working pressure. (1) If a boiler is constructed with lap horizontal seams on the boiler, dome, or drum, a factor of 4 1/2 shall be used in determining the safe working pressure allowed on the boiler.

(2) If a boiler is constructed with butt strap horizontal seams, a factor of four may be used in determining the safe working pressure.

(3) If a boiler rests on a side wall on lugs, is hung by I-beams, or is in any way set up so that the weight of the boiler is pulling against the horizontal seam of rivets, a factor of five must be used in determining the safe working pressure.

(4) If the horizontal lap seams of a boiler are exposed to the fire, a factor of five must be used in determining the safe working pressure.

(5) On new stay bolts, 7,500 pounds pressure per square inch is allowed. If the stay bolts are corroded or defective, the inspector must determine the pressure to be allowed on them.

(6) On braces made of solid material, 8,000 pounds pressure per square inch is allowed. On welded braces or braces with only one crowfoot, 6,000 pounds pressure per square inch is allowed.

(7) No cast iron may be used in the construction or reinforcements of a boiler if the pressure allowed on the boiler is more than 100 pounds per square inch.

History: En. Sec. 555, Pol. C. 1895; re-en. Sec. 1644, Rev. C. 1907; amd. Sec. 6, Ch. 30, L. 1913; re-en. Sec. 2715, R.C.M. 1921; re-en. Sec. 2715, R.C.M. 1935; amd. Sec. 4, Ch. 225, L. 1971; amd. Sec. 9, Ch. 187, L. 1977; R.C.M. 1947, 69-1504(3).

50-74-219. Fee for inspection. (1) Whenever a department inspector inspects a boiler, a fee must be charged and collected by the department prior to issuance of an inspection certificate in accordance with the following schedule:

(a) operating certificate, $26;
(b) internal inspection, $75;
(c) external inspection:
(i) hot water heating and supply, $30;
(ii) steam heating, $40; and
(iii) power boiler, $55; and
(d) special inspection, $50 per hour plus expenses.

(2) Fees collected under this section must be deposited in a department state special revenue account for administration of the boiler inspection program.

History: En. Sec. 4, Ch. 32, L. 1905; re-en. Sec. 1652, Rev. C. 1907; amd. Sec. 12, Ch. 30, L. 1913; amd. Sec. 3, Ch. 32, L. 1919; re-en. Sec. 2723, R.C.M. 1921; re-en. Sec. 2723, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1959; amd. Sec. 3, Ch. 77, L. 1967; amd. Sec. 1, Ch. 255, L. 1969; amd. Sec. 11, Ch. 225, L. 1971; amd. Sec. 30, Ch. 182, L. 1975; amd. Sec. 1, Ch. 83, L. 1977; R.C.M. 1947, 69-1512(1); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 13, Ch. 514, L. 1995; amd. Sec. 3, Ch. 385, L. 1997.

Cross-References

State reimbursement for travel, meals, and lodging, Title 2, ch. 18, part 5.

Part 3
Licenses

50-74-301. License required to operate boilers and steam engines. All boilers and steam engines, except as exempted in 50-74-103, come under the provisions of this chapter, and persons operating same are required to hold the proper grade of license.

History: En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R.C.M. 1921; amd. Sec. 1, Ch. 140, L. 1923; re-en. Sec. 2726, R.C.M. 1935; amd. Sec. 4, Ch. 77, L. 1967; amd. Sec. 14, Ch. 225, L. 1971; amd. Sec. 33, Ch. 182, L. 1975; R.C.M. 1947, 69-1515(part).

50-74-302. General requirements for licensure. No person may be granted a license to operate steam or water boilers and steam machinery under the provisions of this chapter who has not met the qualifications for licensing and been found to be competent by examination to perform the duties of an engineer.

History: En. Sec. 559, Pol. C. 1895; re-en. Sec. 1648, Rev. C. 1907; amd. Sec. 8, Ch. 30, L. 1913; re-en. Sec. 2719, R.C.M. 1921; re-en. Sec. 2719, R.C.M. 1935; amd. Sec. 7, Ch. 225, L. 1971; amd. Sec. 10, Ch. 187, L. 1977; R.C.M. 1947, 69-1508(part).

50-74-303. Engineer's license classifications. (1) Engineers entrusted with the operation, care, and management of steam or water boilers and steam machinery, as specified in 50-74-302, are divided into five classes, namely: first-class engineers, second-class engineers, third-class engineers, agricultural-class engineers, and low-pressure engineers.

(2) Licenses for the operation of steam or water boilers and steam machinery are divided into five classifications in accordance with the following schedule:

(a) First-class engineers are licensed to operate all classes, pressures, and temperatures of steam and water boilers and steam-driven machinery with the exception of traction and hoisting engines.

(b) Second-class engineers are licensed to operate steam boilers operating not in excess of 250 pounds per square inch gauge saturated steam pressure, water boilers operating not in excess of 375 pounds per square inch gauge pressure and 450 degrees F temperature, and steam-driven machinery not to exceed 100 horsepower per unit, with the exception of traction and hoisting engines.

(c) Third-class engineers are licensed to operate steam boilers operating not in excess of 100 pounds per square inch gauge saturated steam pressure and water boilers operating not in excess of 160 pounds per square inch gauge pressure and 350 degrees F temperature.

(d) Agricultural-class engineers are licensed to operate steam boilers that operate not in excess of 150 pounds per square inch saturated steam pressure and that:

(i) are not operated for more than 6 months of the year; and

(ii) are not operated for purposes other than the harvesting or processing of agricultural products.

(e) Low-pressure engineers are licensed to operate steam boilers operating not in excess of 15 pounds per square inch gauge pressure and water boilers operating not in excess of 50 pounds per square inch gauge pressure and 250 degrees F temperature.

History: En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R.C.M. 1921; re-en. Sec. 2720, R.C.M. 1935; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977; R.C.M. 1947, 69-1509(1), (2); amd. Sec. 14, Ch. 514, L. 1995.

Cross-References

Licensure of engineers, Title 37, ch. 67.

50-74-304. Requirements for engineer's license. Each applicant for an engineer's license must be physically and mentally capable of performing the required duties and shall meet the following minimum requirements for the class of engineer's license for which application is being made:

(1) An applicant for a low-pressure engineer's license must be 18 years of age or older, must have at least 3 months' full-time experience in the operation of a boiler in this classification under an engineer who holds a valid low-pressure or higher license, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler in this classification by the department.

(2) An applicant for an agricultural-class engineer's license must be 18 years of age or older, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler in this classification.

(3) An applicant for a third-class engineer's license must be 18 years of age or older, must have at least 6 months' full-time experience in the operation of a boiler in this classification under an engineer holding a valid third-class or higher license, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler in this classification by the department.

(4) An applicant for a second-class engineer's license must be 18 years of age or older and:

(a) must have at least 2 years' full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid second-class or first-class license, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler and steam-driven machinery in this classification by the department; or

(b) shall hold a valid third-class engineer's license, must have at least 1 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid second-class or first-class license, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler and steam-driven machinery in this classification by the department.

(5) An applicant for a first-class engineer's license must be 18 years of age or older and:

(a) must have at least 3 years' full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler and steam-driven machinery in this classification by the department;

(b) shall hold a valid second-class engineer's license, must have at least 1 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler and steam-driven machinery in this classification by the department; or

(c) shall hold a valid third-class engineer's license, must have at least 2 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler and steam-driven machinery in this classification by the department.

History: En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R.C.M. 1921; re-en. Sec. 2720, R.C.M. 1935; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977; R.C.M. 1947, 69-1509(3); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 15, Ch. 514, L. 1995.

50-74-305. Exceptions to requirements for engineer's license. Allowable exceptions or variances to the minimum requirements set out in 50-74-304 are as follows:

(1) An applicant for an engineer's license in any classification who holds a valid license in that classification from another state having licensing requirements equal to or exceeding the minimum requirements set out in 50-74-304, who successfully passes a written examination prescribed by the department, and who is found competent to operate a boiler and steam-driven machinery in that classification by the department must be granted a license in that classification.

(2) Operating experience in a classification accumulated in the United States military services or the merchant marine service satisfactory to the department may be accepted in lieu of the operating experience required for licensing of engineers in each of the license classifications.

(3) An applicant who has training in the operation of steam or water boilers and steam machinery and who has been certified as having satisfactorily completed a prescribed training course from a department-approved institution or training program in the classification for which the applicant is applying may, pursuant to department rule, be credited with experience toward a first-, second-, or third-class or low-pressure engineer's license.

History: En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R.C.M. 1921; re-en. Sec. 2720, R.C.M. 1935; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977; R.C.M. 1947, 69-1509(4); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 33, Ch. 308, L. 1995; amd. Sec. 16, Ch. 514, L. 1995.

50-74-306. Traction licenses. (1) None of the licenses named in 50-74-303 entitle its holder to operate a traction engine.

(2) A person who is entrusted with the care and management of traction engines or boilers on wheels is required to pass an examination testing his competency to operate that class of machinery and procure a traction license.

(3) A traction license does not entitle its holder to operate any other class of steam machinery.

History: En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R.C.M. 1921; re-en. Sec. 2720, R.C.M. 1935; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977; R.C.M. 1947, 69-1509(part).

50-74-307. Requirements for traction licenses. An applicant for a traction engineer's license must be 18 years of age or older, must have at least 6 months' full-time experience in the operation of steam traction engines, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a traction engine by the department.

History: En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R.C.M. 1921; re-en. Sec. 2720, R.C.M. 1935; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977; R.C.M. 1947, 69-1509(part); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 17, Ch. 514, L. 1995.

50-74-308. Waiver of experience requirement for traction licenses. The department, at its discretion, may waive the experience requirement for operators of traction engines which are maintained and operated as a hobby for the restoration and show purposes of antique equipment.

History: En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R.C.M. 1921; re-en. Sec. 2720, R.C.M. 1935; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977; R.C.M. 1947, 69-1509(part); amd. Sec. 64, Ch. 613, L. 1989.

50-74-309. License fees. An applicant for an engineer's license shall pay a fee according to the class of license for which application is made, as specified by administrative rule, commensurate with program area costs approved by the legislature. All fees must be deposited in the state special revenue fund for the use of the department. The account balance may not exceed one-half of 1 year's approved appropriation without either a reduction in fees or an increase in appropriation approved by the legislature.

History: En. Sec. 4, Ch. 32, L. 1905; re-en. Sec. 1652, Rev. C. 1907; amd. Sec. 12, Ch. 30, L. 1913; amd. Sec. 3, Ch. 32, L. 1919; re-en. Sec. 2723, R.C.M. 1921; re-en. Sec. 2723, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1959; amd. Sec. 3, Ch. 77, L. 1967; amd. Sec. 1, Ch. 255, L. 1969; amd. Sec. 11, Ch. 225, L. 1971; amd. Sec. 30, Ch. 182, L. 1975; amd. Sec. 1, Ch. 83, L. 1977; R.C.M. 1947, 69-1512(2); amd. Sec. 18, Ch. 514, L. 1995.

Cross-References

State fund structure, 17-2-102.

50-74-310. Application to be accompanied by one-half of license fee. Each application shall be accompanied by a payment equal to 50% of the license fee for which application is being made. The payment shall be forfeited in the event the applicant fails to appear for the examination at the scheduled time or fails to pass the examination.

History: En. Sec. 4, Ch. 32, L. 1905; re-en. Sec. 1652, Rev. C. 1907; amd. Sec. 12, Ch. 30, L. 1913; amd. Sec. 3, Ch. 32, L. 1919; re-en. Sec. 2723, R.C.M. 1921; re-en. Sec. 2723, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1959; amd. Sec. 3, Ch. 77, L. 1967; amd. Sec. 1, Ch. 255, L. 1969; amd. Sec. 11, Ch. 225, L. 1971; amd. Sec. 30, Ch. 182, L. 1975; amd. Sec. 1, Ch. 83, L. 1977; R.C.M. 1947, 69-1512(3).

50-74-311. Waiting period before reexamination permitted. In case of the failure of any applicant to successfully pass an examination, 45 days must elapse before he can again be examined for license.

History: En. Sec. 4, Ch. 32, L. 1905; re-en. Sec. 1652, Rev. C. 1907; amd. Sec. 12, Ch. 30, L. 1913; amd. Sec. 3, Ch. 32, L. 1919; re-en. Sec. 2723, R.C.M. 1921; re-en. Sec. 2723, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1959; amd. Sec. 3, Ch. 77, L. 1967; amd. Sec. 1, Ch. 255, L. 1969; amd. Sec. 11, Ch. 225, L. 1971; amd. Sec. 30, Ch. 182, L. 1975; amd. Sec. 1, Ch. 83, L. 1977; R.C.M. 1947, 69-1512(4).

50-74-312. Review of license rejection. (1) An applicant for a license under the provisions of this chapter whose application has been rejected may, within 45 days after the date of the rejection, set forth in writing any arguments opposing the rejection and request a review by the department. The request must be addressed to the department and must be signed by the applicant.

(2) Within 2 days after receiving the request, the department shall notify the applicant in writing that on a certain day, not less than 5 days or more than 30 days after receipt of the written request, the department shall review and evaluate the application and any arguments opposing the rejection of the license application.

(3) The applicant may appear in person at the review. At least 2 days before the day set for the review, the applicant may designate in writing to the department of commerce the name of an engineer holding a valid license of equal or higher grade than the one applied for, and the engineer may testify on behalf of the applicant at the review.

(4) After the review, if the department of commerce determines that the applicant is entitled to the license, the department shall issue the license. If the department affirms the decision to not issue the license, the applicant is required to reapply to take the license examination, as provided in 50-74-309 through 50-74-311, and may not take the examination within 45 days of the final decision to not issue the license.

History: (1) thru (3)En. Sec. 564, Pol. C. 1895; re-en. Sec. 1653, Rev. C. 1907; re-en. Sec. 2724, R.C.M. 1921; re-en. Sec. 2724, R.C.M. 1935; amd. Sec. 12, Ch. 225, L. 1971; amd. Sec. 31, Ch. 182, L. 1975; Sec. 69-1513, R.C.M. 1947; (4)En. Sec. 565, Pol. C. 1895; re-en. Sec. 1654, Rev. C. 1907; re-en. Sec. 2725, R.C.M. 1921; re-en. Sec. 2725, R.C.M. 1935; amd. Sec. 13, Ch. 225, L. 1971; amd. Sec. 32, Ch. 182, L. 1975; Sec. 69-1514, R.C.M. 1947; R.C.M. 1947, 69-1513, 69-1514; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 19, Ch. 514, L. 1995.

50-74-313. Renewal of licenses. (1) All certificates of license to engineers of all classes must be renewed at periodic intervals as established by the department by rule.

(2) Any engineer failing to renew the license within at least 30 days after the date of expiration must be assessed the fee for the original license of the same grade before the license will be reissued.

(3) Any engineer failing to renew the license within 12 months of the date of expiration shall reapply for an engineer's license as required by the provisions of 50-74-303 through 50-74-308.

(4) Any engineer whose license expired while the engineer was in the military or naval service of the United States shall within 90 days of discharge renew the license at the renewal fee.

History: En. Sec. 6, Ch. 32, L. 1905; re-en. Sec. 1656, Rev. C. 1907; amd. Sec. 14, Ch. 30, L. 1913; amd. Sec. 1, Ch. 54, L. 1919; re-en. Sec. 2727, R.C.M. 1921; amd. Sec. 2, Ch. 54, L. 1959; amd. Sec. 167, Ch. 147, L. 1963; amd. Sec. 15, Ch. 225, L. 1971; R.C.M. 1947, 69-1516; amd. Sec. 54, Ch. 492, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-74-314. Repealed. Sec. 46, Ch. 481, L. 1997.

History: En. Sec. 561, Pol. C. 1895; re-en. Sec. 1650, Rev. C. 1907; amd. Sec. 10, Ch. 30, L. 1913; re-en. Sec. 2721, R.C.M. 1921; amd. Sec. 9, Ch. 225, L. 1971; amd. Sec. 29, Ch. 182, L. 1975; R.C.M. 1947, 69-1510; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 20, Ch. 514, L. 1995.

50-74-315. Unlawful to operate boiler or steam engine without license. (1) It is unlawful for any person in this state to operate a stationary boiler or steam engine or any boiler or steam engine other than engines and boilers exempted by the provisions of 50-74-103 without a license granted under the provisions of this chapter. The owner, renter, or user of any engine or boiler is equally liable for the violation of this section.

(2) A person who operates a boiler or steam engine without first obtaining a license is guilty of a misdemeanor and, upon conviction, shall be fined no less than $50 or more than $100 or be imprisoned in the county jail for any term not to exceed 60 days, or both.

History: (1)En. Sec. 568, Pol. C. 1895; re-en. Sec. 1657, Rev. C. 1907; amd. Sec. 15, Ch. 30, L. 1913; re-en. Sec. 2728, R.C.M. 1921; re-en. Sec. 2728, R.C.M. 1935; amd. Sec. 16, Ch. 225, L. 1971; amd. Sec. 34, Ch. 182, L. 1975; Sec. 69-1517, R.C.M. 1947; (2)En. Sec. 559, Pol. C. 1895; re-en. Sec. 1648, Rev. C. 1907; amd. Sec. 8, Ch. 30, L. 1913; re-en. Sec. 2719, R.C.M. 1921; re-en. Sec. 2719, R.C.M. 1935; amd. Sec. 7, Ch. 225, L. 1971; amd. Sec. 10, Ch. 187, L. 1977; Sec. 69-1508, R.C.M. 1947; R.C.M. 1947, 69-1508(part), 69-1517(part).

50-74-316. Unlawful to employ unlicensed operator. It shall be unlawful, except as stated in 50-74-317, for any person, firm, or corporation to employ any person not duly licensed as an engineer within the meaning of this chapter to run or operate any of the boilers or engines subject to the provisions of this chapter.

History: En. Sec. 568, Pol. C. 1895; re-en. Sec. 1657, Rev. C. 1907; amd. Sec. 15, Ch. 30, L. 1913; re-en. Sec. 2728, R.C.M. 1921; re-en. Sec. 2728, R.C.M. 1935; amd. Sec. 16, Ch. 225, L. 1971; amd. Sec. 34, Ch. 182, L. 1975; R.C.M. 1947, 69-1517(part).

50-74-317. When unlicensed person may operate. (1) In case of accident, sickness, or any unforeseen event that prevents a licensed engineer, employed by an owner, renter, or user of an engine or boiler, from performing required duties, the owner, renter, or user may for 15 days employ any person 18 years of age or older whom the owner, renter, or user considers competent to run the engine or boiler.

(2) Although the person employed may not be the holder of an engineer's license, the person must have reasonable qualifications acceptable to the department.

(3) A person employing an unlicensed engineer shall immediately notify the department.

(4) An owner, renter, or user of boilers or steam machinery may not employ unlicensed engineers for more than 15 days in any 1 calendar year.

History: En. Sec. 568, Pol. C. 1895; re-en. Sec. 1657, Rev. C. 1907; amd. Sec. 15, Ch. 30, L. 1913; re-en. Sec. 2728, R.C.M. 1921; re-en. Sec. 2728, R.C.M. 1935; amd. Sec. 16, Ch. 225, L. 1971; amd. Sec. 34, Ch. 182, L. 1975; R.C.M. 1947, 69-1517(part); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 21, Ch. 514, L. 1995.

CHAPTER 75

CONSOLIDATION OF BOILER, MINE, AND COAL MINE INSPECTORS

(Repealed. Sec. 10, Ch. 21, L. 1981)

Chapter Compiler's Comments

Histories of Repealed Sections:

50-75-101. En. Sec. 1, Ch. 92, L. 1917; amd. Sec. 1, Ch. 47, L. 1921; re-en. Sec. 3034, R.C.M. 1921; re-en. Sec. 3034, R.C.M. 1935; R.C.M. 1947, 50-901.

50-75-102. En. Sec. 2, Ch. 92, L. 1917; amd. Sec. 2, Ch. 47, L. 1921; re-en. Sec. 3035, R.C.M. 1921; re-en. Sec. 3035, R.C.M. 1935; R.C.M. 1947, 50-902.

50-75-103. En. Sec. 3, Ch. 92, L. 1917; re-en. Sec. 3036, R.C.M. 1921; re-en. Sec. 3036, R.C.M. 1935; R.C.M. 1947, 50-903.

50-75-104. En. Sec. 4, Ch. 92, L. 1917; re-en. Sec. 3037, R.C.M. 1921; re-en. Sec. 3037, R.C.M. 1935; R.C.M. 1947, 50-904(part).

50-75-105. En. Sec. 4, Ch. 92, L. 1917; re-en. Sec. 3037, R.C.M. 1921; re-en. Sec. 3037, R.C.M. 1935; R.C.M. 1947, 50-904(part); amd. Sec. 24, Ch. 37, L. 1979.

50-75-106. En. Sec. 5, Ch. 92, L. 1917; re-en. Sec. 3038, R.C.M. 1921; re-en. Sec. 3038, R.C.M. 1935; R.C.M. 1947, 50-905.

50-75-107. En. Sec. 55, Ch. 96, L. 1915; amd. Sec. 6, Ch. 92, L. 1917; re-en. Sec. 3039, R.C.M. 1921; re-en. Sec. 3039, R.C.M. 1935; R.C.M. 1947, 50-906(part); amd. Sec. 25, Ch. 37, L. 1979.

CHAPTER 76

HOISTING ENGINES

Part 1 — General Provisions

50-76-101. Where chapter not to apply.
50-76-102. Hoisting engine license required.
50-76-103. Crane and hoist license required.
50-76-104. Application and fee for license.
50-76-105. Renewal and period of validity of license.
50-76-106. Repealed.
50-76-107. Scope of license.
50-76-108. Renewal of application by rejected candidate.
50-76-109. Violation of chapter a misdemeanor.
50-76-110. Crane inspector.
50-76-111. Definitions.
50-76-112. Rulemaking authority.

Chapter Cross-References

Workers' compensation, Title 39, ch. 71.

Part 1
General Provisions

50-76-101. Where chapter not to apply. (1) This chapter shall not apply to hoisting engines, air compressors, or elevators under federal control or to operating elevators in completed private or public buildings.

(2) The provisions of this chapter shall not apply to forklifts and front-end and rear-end loaders or line trucks and bucket trucks. For the purposes of this section, "line trucks" are hoisting and digging devices mounted on a standard manufacturer's truck chassis with an all-weather cab capable of transporting a driver and two or more crewmen. Line trucks are equipped with a hydraulically operated, telescoping boom which uses a nonmetallic cable for hoisting. Line trucks may be equipped with a rotary digging device and are capable of attaining maximum allowable highway speeds. "Bucket trucks" are personnel-lifting devices designed to lift personnel to work stations above ground. Bucket trucks are not designed for the purposes intended for a line truck.

History: (1)En. Sec. 3, Ch. 104, L. 1915; amd. Sec. 2, Ch. 31, L. 1919; re-en. Sec. 2732, R.C.M. 1921; re-en. Sec. 2732, R.C.M. 1947; amd. Sec. 19, Ch. 225, L. 1971; amd. Sec. 4, Ch. 456, L. 1975; Sec. 69-1603, R.C.M. 1947; (2)En. Sec. 1, Ch. 104, L. 1915; amd. Sec. 1, Ch. 31, L. 1919; re-en. Sec. 2730, R.C.M. 1921; re-en. Sec. 2730, R.C.M. 1935; amd. Sec. 17, Ch. 225, L. 1971; amd. Sec. 35, Ch. 182, L. 1975; amd. Sec. 1, Ch. 456, L. 1975; Sec. 69-1601, R.C.M. 1947; R.C.M. 1947, 69-1601(5), 69-1603(2); amd. Sec. 1, Ch. 288, L. 1983; amd. Sec. 1, Ch. 247, L. 1987.

50-76-102. Hoisting engine license required. (1) (a) It is unlawful for a person to operate any hoisting engine driven by any power when used in lowering or hoisting personnel or material in industrial operations or on construction projects without first obtaining a license from the department of commerce.

(b) In emergencies under 50-74-317 relating to the employment of unlicensed engineers, the provisions of that section apply to the operation of the engines and machinery named in this section.

(2) First-class hoisting engineers must be licensed to operate hoisting engines driven by any power and unlimited horsepower used in the lowering or hoisting of personnel or material in industrial operations or on construction projects.

(3) Second-class hoisting engineers must be licensed to operate hoisting engines driven by any power and not in excess of 100 brake horsepower used in the lowering or hoisting of personnel or material in industrial operations or on construction projects.

(4) The provisions of this section do not apply to hoists and cranes defined in 50-76-103.

History: En. Sec. 1, Ch. 104, L. 1915; amd. Sec. 1, Ch. 31, L. 1919; re-en. Sec. 2730, R.C.M. 1921; re-en. Sec. 2730, R.C.M. 1935; amd. Sec. 17, Ch. 225, L. 1971; amd. Sec. 35, Ch. 182, L. 1975; amd. Sec. 1, Ch. 456, L. 1975; R.C.M. 1947, 69-1601(1) thru (4); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 22, Ch. 514, L. 1995.

50-76-103. Crane and hoist license required. (1) (a) It is unlawful for a person to operate any crane and hoist equipment, when used in hoisting or lowering personnel or material, that has a manufacturer's rating of more than 6 tons and a boom length of more than 25 feet without first obtaining a license from the department of commerce. This equipment includes overhead trolley and gantry cranes used in construction only and excludes equipment with excavation attachments or log loading equipment when in use.

(b) In emergencies, 50-74-317 applies to the operation of the equipment named in this section.

(2) Licensing is as follows:

(a) First-class crane and hoist engineers are licensed to operate any hoisting equipment in industrial or construction operations.

(b) (i) An applicant for a first-class crane and hoist engineer's license must be 18 years of age or older and:

(A) must have no less than 3 years' experience operating equipment requiring a second-class crane and hoist engineer's license or shall demonstrate equivalent competency by examination; and

(B) is required to pass a written test prescribed by the department of commerce.

(ii) A biennial physical exam is required of all licensees.

(c) Second-class crane and hoist engineers are licensed to operate crane and hoist equipment with a manufacturer's rating of 6 tons and a boom length of 25 feet up to equipment with a rating of 15 tons and a boom length of 60 feet.

(d) (i) An applicant for a second-class crane and hoist engineer's license must be 18 years of age or older and:

(A) must have no less than 2 years' experience in actual operation of crane and hoist equipment covered by this section or shall demonstrate equivalent competency by examination; and

(B) is required to successfully pass a written examination prescribed by the department of commerce.

(ii) A biennial physical exam is required of all licensees.

(e) Third-class crane and hoist engineers are licensed to move all truck cranes driven by any power and of any capacity. This license requirement applies to truck crane oilers who move truck cranes.

(f) An applicant for a third-class crane and hoist engineer's license is required to successfully pass a written test prescribed by the department of commerce and must be 18 years of age or older before receiving a license.

(3) The department of commerce shall reexamine each licensed engineer or operator every 5 years during the anniversary month of the issuance of the license if the licensee has not worked at the trade for 5 years.

History: En. 69-1601.1 by Sec. 2, Ch. 456, L. 1975; amd. Sec. 1, Ch. 148, L. 1977; R.C.M. 1947, 69-1601.1; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 23, Ch. 514, L. 1995; amd. Sec. 44, Ch. 481, L. 1997.

50-76-104. Application and fee for license. Application for licenses must be made to the department of commerce and submitted with the appropriate fee that is set commensurate with the cost of administering this program, to be deposited in the state special revenue fund for use by the department.

History: En. Sec. 2, Ch. 104, L. 1915; re-en. Sec. 2731, R.C.M. 1921; re-en. Sec. 2731, R.C.M. 1935; amd. Sec. 18, Ch. 225, L. 1971; amd. Sec. 36, Ch. 182, L. 1975; amd. Sec. 3, Ch. 456, L. 1975; R.C.M. 1947, 69-1602(part); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 24, Ch. 514, L. 1995; amd. Sec. 45, Ch. 481, L. 1997.

50-76-105. Renewal and period of validity of license. The license is valid for a period established by the department of commerce by rule and may be renewed in the same manner provided by law for the renewal of a license to operate steam engines, boilers, or steam-driven machinery under chapter 74 of this title.

History: En. Sec. 2, Ch. 104, L. 1915; re-en. Sec. 2731, R.C.M. 1921; re-en. Sec. 2731, R.C.M. 1935; amd. Sec. 18, Ch. 225, L. 1971; amd. Sec. 36, Ch. 182, L. 1975; amd. Sec. 3, Ch. 456, L. 1975; R.C.M. 1947, 69-1602(part); amd. Sec. 55, Ch. 492, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-76-106. Repealed. Sec. 46, Ch. 481, L. 1997.

History: En. Sec. 2, Ch. 104, L. 1915; re-en. Sec. 2731, R.C.M. 1921; re-en. Sec. 2731, R.C.M. 1935; amd. Sec. 18, Ch. 225, L. 1971; amd. Sec. 36, Ch. 182, L. 1975; amd. Sec. 3, Ch. 456, L. 1975; R.C.M. 1947, 69-1602(part); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 25, Ch. 514, L. 1995.

50-76-107. Scope of license. A license granted under this chapter entitles the holder to operate any of the machinery named in 50-76-102 and 50-76-103, and the license shall specify that machinery, but no license issued shall authorize or qualify the person to whom issued to operate a boiler, steam engine, steam-driven machinery, or air compressor.

History: En. Sec. 3, Ch. 104, L. 1915; amd. Sec. 2, Ch. 31, L. 1919; re-en. Sec. 2732, R.C.M. 1921; re-en. Sec. 2732, R.C.M. 1947; amd. Sec. 19, Ch. 225, L. 1971; amd. Sec. 4, Ch. 456, L. 1975; R.C.M. 1947, 69-1603(1).

50-76-108. Renewal of application by rejected candidate. Any person who has applied for a license under this chapter and has been rejected may renew his application for a license within the time and in the manner prescribed in 50-74-312.

History: En. Sec. 6, Ch. 104, L. 1915; re-en. Sec. 2735, R.C.M. 1921; amd. Sec. 5, Ch. 456, L. 1975; R.C.M. 1947, 69-1606.

50-76-109. Violation of chapter a misdemeanor. Every person who operates any of the engines and machinery named in 50-76-102 or 50-76-103 for which a license is required without first obtaining a license as required by the sections referred to above and every owner, employer, or manager of any such engines or machinery who permits any unlicensed person to operate such engines or machinery or any person who violates any of the provisions of this chapter is guilty of a misdemeanor.

History: En. Sec. 7, Ch. 104, L. 1915; re-en. Sec. 2736, R.C.M. 1921; re-en. Sec. 2736, R.C.M. 1935; amd. Sec. 21, Ch. 225, L. 1971; amd. Sec. 7, Ch. 456, L. 1975; amd. Sec. 2, Ch. 148, L. 1977; R.C.M. 1947, 69-1607.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Misdemeanor penalty when none specified, 46-18-212.

50-76-110. Crane inspector. The department of commerce shall employ at least one crane inspector. The crane inspector shall hold a first-class hoisting engineer's license under this chapter for a minimum of 1 year and must have a minimum of 3 years' experience operating cranes.

History: En. 69-1608 by Sec. 6, Ch. 456, L. 1975; R.C.M. 1947, 69-1608; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 26, Ch. 514, L. 1995.

50-76-111. Definitions. As used in this part, the following definitions apply:

(1) "Crane" means a machine with a hoisting mechanism that is integral to the machine and that is used for lifting and lowering a load and for moving it horizontally.

(2) "Department" means the department of commerce provided for in 2-15-1801.

(3) "Gantry crane" and "trolley crane" are synonymous and mean a crane similar to an overhead crane except that the bridge for carrying the trolley or trolleys is rigidly supported on two or more legs running on fixed rails or another type of runway.

(4) "Hoist" means a power-driven apparatus capable of lifting and lowering loads and not designed to facilitate horizontal movements.

History: **En. Sec. 40, Ch. 481, L. 1997.**

50-76-112. Rulemaking authority. The department may adopt rules consistent with the purposes of this chapter for the administration of the following classes of crane and hoist operators:

(1) crane and hoist oiler;
(2) crane and hoist hoisting;
(3) crane and hoist hydraulic;
(4) crane gantry and trolley;
(5) hoists;
(6) mine hoists;
(7) hydraulic and boom trucks; and
(8) tower crane.

History: **En. Sec. 41, Ch. 481, L. 1997.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

CHAPTER 77

CONSTRUCTION SITE HEALTH AND SAFETY

Part 1 — General Provisions

50-77-101. Scaffolds — definition — safety practices — liability.
50-77-102. Temporary floors for protection of workmen.
50-77-103. Planking above scaffolds.
50-77-104. Guarding of stairways and other openings.
50-77-105. Temporary toilets.
50-77-106. Repealed.
50-77-107. Penalty for violation.

Chapter Cross-References

Workers' compensation, Title 39, ch. 71.

Occupational safety, Title 50, ch. 71.

Part 1
General Provisions

50-77-101. Scaffolds — definition — safety practices — liability. (1) As used in this part, "scaffold" or "scaffolding" means a temporarily elevated platform and its supporting structure that is used on a construction site to support a person, material, or both. The term includes a ladder or other equipment that is the exclusive route of access to the scaffold but does not include any other ladder or other mobile construction equipment.

(2) Employers and employees shall follow safety practices commonly recognized in the construction industry as well as applicable state and federal occupational safety laws.

(3) Subject to the comparative negligence principles provided in Title 27, chapter 1, part 7, a contractor, subcontractor, or builder who uses or constructs a scaffold on a construction site is liable for damages sustained by any person who uses the scaffold, except a fellow employee or immediate employer, when the damages are caused by negligence of the contractor, subcontractor, or builder in the use or construction of the scaffold.

(4) If a person dies from an injury caused by the negligent use or construction of a scaffold, the right of action survives and may be prosecuted and maintained by the decedent's heirs or personal representatives.

History: En. Sec. 1, Ch. 107, L. 1909; re-en. Sec. 2672, R.C.M. 1921; re-en. Sec. 2672, R.C.M. 1935; amd. Sec. 8, Ch. 187, L. 1977; R.C.M. 1947, 69-1401; amd. Sec. 1, Ch. 404, L. 1995; (3), (4)En. Sec. 2, Ch. 404, L. 1995.

50-77-102. Temporary floors for protection of workmen. (1) It shall be the duty of every owner, person, or corporation who shall have the direct and immediate supervision or control of the construction or remodeling of any building having more than three framed floors, whether some or all of said floors are above or below the established street grade, to provide and lay upon the upper side of the joists or girders, or both, of the first floor below the riveters and structural steel setters a plank floor, which shall be laid to form a good substantial temporary floor for the protection of employees and all persons engaged above or below or on such temporary floor in such building.

(2) Where the permanent floor is in place on the floor herein required to be planked, a temporary protective floor shall not be required.

(3) If the floor or permanent floor of the second floor, any other floor above the second, or roof is being placed previous to the permanent floor immediately below the floor which is being arched or planked, a good substantial temporary floor shall be laid on the joists and girders of the next lower floor.

(4) For the purpose of this section, the lowest framed floor in the building shall be considered the first floor.

History: En. Sec. 2, Ch. 107, L. 1909; re-en. Sec. 2673, R.C.M. 1921; R.C.M. 1947, 69-1402.

50-77-103. Planking above scaffolds. In buildings more than three stories high where persons are working on a scaffold or scaffolds on the outside of such buildings, such persons shall be protected by well secured planking set over the heads of such persons for the full width of the scaffolding on which they are working if another story or stories are being raised above such persons during the time they are working on such outside scaffold or scaffolding.

History: **En. Sec. 3, Ch. 107, L. 1909; re-en. Sec. 2674, R.C.M. 1921; R.C.M. 1947, 69-1403.**

50-77-104. Guarding of stairways and other openings. It shall be the duty of all owners, contractors, builders, or persons having the direct and immediate control or supervision of any buildings in course of erection, which shall be more than 30 feet high, to see that all stairways, elevator openings, flues, and all other openings in the floors shall be covered or properly protected.

History: **En. Sec. 4, Ch. 107, L. 1909; re-en. Sec. 2675, R.C.M. 1921; re-en. Sec. 2675, R.C.M. 1935; R.C.M. 1947, 69-1404(part).**

50-77-105. Temporary toilets. Wherever such building or buildings over three stories high, other than a residence, are being erected in any city or town, temporary toilets in or convenient to such building shall be maintained for the convenience of the employees.

History: **En. Sec. 4, Ch. 107, L. 1909; re-en. Sec. 2675, R.C.M. 1921; re-en. Sec. 2675, R.C.M. 1935; R.C.M. 1947, 69-1404(part).**

50-77-106. Repealed. Sec. 1, Ch. 232, L. 1999.

History: **En. Sec. 5, Ch. 107, L. 1909; re-en. Sec. 2676, R.C.M. 1921; re-en. Sec. 2676, R.C.M. 1935; R.C.M. 1947, 69-1405(part).**

50-77-107. Penalty for violation. Any person violating any of the provisions of the foregoing sections shall be fined not less than $100 or more than $200 for each offense.

History: **En. Sec. 5, Ch. 107, L. 1909; re-en. Sec. 2676, R.C.M. 1921; re-en. Sec. 2676, R.C.M. 1935; R.C.M. 1947, 69-1405(part).**

Cross-References

Criminal responsibility of corporations, 45-2-311.

CHAPTER 78

EMPLOYEE AND COMMUNITY HAZARDOUS CHEMICAL INFORMATION ACT

Part 1 — General

50-78-101. Short title.
50-78-102. Definitions.
50-78-103. Applicability — exemptions.
50-78-104. Relationship to OSHA standard.

Part 2 — Notice Required

50-78-201. Notice to employees.
50-78-202. Workplace chemical list.
50-78-203. Material safety data sheets.
50-78-204. Employee rights.
50-78-205. Trade secret confidentiality.
50-78-206. Labels.

Part 3 — Information and Education

50-78-301. Emergency and community information.
50-78-302 through 50-78-304 reserved.
50-78-305. Employee education program.
50-78-306. Departmental information program.

Part 4 — Enforcement and Penalties

50-78-401. No effect on other duties or liabilities.
50-78-402. Complaints, investigation, and penalties.

Chapter Cross-References

Occupational health, Title 50, ch. 70.

Occupational safety, Title 50, ch. 71.

Part 1

General

50-78-101. Short title. This chapter may be known and cited as the "Employee and Community Hazardous Chemical Information Act".

History: En. Sec. 1, Ch. 641, L. 1985.

50-78-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Chemical manufacturer" means an employer in codes 31 through 33, as defined in the North American Industry Classification System Manual, with a workplace where chemicals are produced for use or distribution.

(2) "Chemical name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the international union of pure and applied chemistry or the chemical abstracts service rules of nomenclature or a name that will clearly identify the chemical for the purpose of conducting a hazard evaluation.

(3) "Common name" means any designation or identification, such as code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.

(4) "Department" means the department of environmental quality provided for in Title 2, chapter 15, part 35.

(5) "Designated representative" means:

(a) the individual or organization to whom an employee gives written authorization to exercise the employee's rights under this chapter; or

(b) a recognized or certified collective bargaining agent who is automatically a designated representative without regard to written employee authorization.

(6) "Distributor" means a business, other than a chemical manufacturer, that supplies hazardous chemicals to other distributors or to employers.

(7) "Employee" means a person who may be exposed to hazardous chemicals in the workplace under normal operating conditions or possible emergencies.

(8) "Employer" means a person, firm, corporation, partnership, association, governmental agency, or other entity that is engaged in business or providing services and that employs workers.

(9) "Exposure" means ingestion, inhalation, absorption, or other contact in the workplace with a hazardous chemical and includes potential, accidental, or possible exposure.

(10) "Hazardous chemical" means, except as provided in 50-78-103:

(a) any element, chemical compound, or mixture of elements or compounds that is a physical hazard or health hazard, as defined by subsection

(c) of the OSHA standard, and that has been identified as such by the federal occupational safety and health administration or the manufacturer and has been filed with the federal occupational safety and health administration;

(b) any hazardous chemical, as defined by subsection (d)(3) of the OSHA standard; or

(c) any emitter of ionizing radiation.

(11) "Label" means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals.

(12) "Local fire chief" means:

(a) the chief of the municipal fire department or the chief's agent, for any workplace located within a city or town; or

(b) the county rural fire chief or the district rural fire chief or the chief's agent, for any workplace not located within a city or town.

(13) "Manufacturing employer" means an employer with a workplace classified in codes 31 through 33 of the North American Industry Classification System who manufactures, uses, or stores a hazardous chemical.

(14) "Material safety data sheet" means a document prepared in accordance with the requirements of the OSHA standard and containing chemical hazard and safe handling information.

(15) "Nonmanufacturing employer" means an employer with a workplace classified in a North American Industry Classification System code other than 31 through 33.

(16) "OSHA standard" means the hazard communication standard issued by the federal occupational safety and health administration, codified under 29 CFR 1910.1200, as that statute reads on January 1, 1985.

(17) "Trade secret" means a confidential formula, pattern, process, device, or information, including chemical name or other unique chemical identifier, that is used in an employer's business and that gives the employer an opportunity to obtain an advantage over competitors.

(18) "Work area" means a room or defined space in a workplace where hazardous chemicals are produced, used, or stored and where employees are present.

(19) "Workplace" means an establishment at one geographical location containing one or more work areas.

(20) "Workplace chemical list" means the list of hazardous chemicals developed under this chapter or under subsection (e)(1)(i) of the OSHA standard.

History: **En. Sec. 2, Ch. 641, L. 1985; amd. Sec. 145, Ch. 418, L. 1995; amd. Sec. 332, Ch. 546, L. 1995; amd. Sec. 80, Ch. 51, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 51 in definition of chemical manufacturer near beginning substituted "codes 31 through 33, as defined in the North American Industry Classification System Manual" for "standard industrial classification codes 20 through 39, as defined in the federal Standard Industrial Classification Manual"; in definition of manufacturing employer after "classified in" substituted "codes 31 through 33 of the North American Industry Classification System" for "any standard industrial classification code 20 through 39"; in definition of nonmanufacturing employer near middle substituted "a North American Industry Classification System" for "any standard industrial classification" and at end after "other than" substituted "31 through 33" for "20 through 39"; and made minor changes in style. Amendment effective March 15, 1999.

50-78-103. Applicability — exemptions. (1) The provisions of this chapter do not apply to:

(a) any consumer product intended for personal consumption or use by an employee;

(b) any retail food sale establishment or other retail trade establishment, exclusive of processing and repair areas;

(c) a food, drug, or cosmetic as defined in the Montana Food, Drug, and Cosmetic Act, Title 50, chapter 31;

(d) a source of ionizing radiation that is an exempt or generally licensed material or device, as defined and described in rules adopted under 50-79-202 and implementing 50-79-104 and 50-79-202;

(e) the radiological properties of any source, byproduct, or special nuclear material as defined in sections 11(z), 11(aa), and 11(e)(1) of the federal Atomic Energy Act of 1954; or

(f) sealed containers of hazardous chemicals:

(i) during transportation or while in storage at transportation terminals, so long as existing labels are not removed or defaced and the employer complies with state and federal regulations relating to the transportation of hazardous chemicals; or

(ii) at a facility of a distributor, as long as existing labels are not removed or defaced and the employer distributes material safety data sheets as required under 50-78-203(1).

(2) Employers operating the following workplaces are in compliance with this chapter if they retain and make accessible to employees and, when applicable, to students, all material safety data sheets received or, if no material safety data sheet is received for a hazardous chemical, any other information received on its hazards and safe handling and if the provisions of 50-78-206, 50-78-301(2) through (4), and 50-78-305 are met:

(a) a teaching, research, or testing laboratory, including any associated storeroom;

(b) a clinical laboratory or health care facility as defined in 50-5-101;

(c) a pharmacy as defined in 37-7-101;

(d) a public health center as defined in 7-34-2102; or

(e) an office of a physician, dentist, osteopath, podiatrist, optometrist, or veterinarian licensed under Title 37.

(3) The provisions of this chapter do not apply to any hazardous chemical subject to the packaging and labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136, et seq., except that a chemical manufacturer producing the hazardous chemicals must comply with all provisions of this chapter.

History: En. Sec. 3, Ch. 641, L. 1985; amd. Sec. 1, Ch. 536, L. 1987; amd. Sec. 16, Ch. 93, L. 1997.

50-78-104. Relationship to OSHA standard. Any employer complying with the provisions of the OSHA standard, whether or not that employer is regulated by the OSHA standard, is exempt from the provisions of this chapter, except for 50-78-204 and 50-78-301.

History: En. Sec. 4, Ch. 641, L. 1985; amd. Sec. 2, Ch. 536, L. 1987.

Part 2
Notice Required

50-78-201. Notice to employees. Employers shall post adequate notice at locations where notices are normally posted informing employees about their rights under this chapter.

History: En. Sec. 5, Ch. 641, L. 1985.

50-78-202. Workplace chemical list. (1) Each employer shall compile and maintain a workplace chemical list. Except as provided in 50-78-205, the workplace chemical list must contain the chemical name of each hazardous chemical in the workplace, cross-referenced to any generally used common name. For chemical mixtures, the chemical name of each hazardous constituent indicated on the material safety data sheet must be provided in parentheses along with the chemical name. The chemical abstracts service registry number, if available from the material safety data sheet, must accompany all chemical names on the workplace chemical list.

(2) The workplace chemical list must indicate the work area in which each hazardous chemical is normally stored or used.

(3) The workplace chemical list may be prepared for the workplace as a whole or for each work area, provided the list is readily available to employees and their designated representatives.

(4) New or newly assigned employees must be made aware of the workplace chemical list before working with or in a work area containing hazardous chemicals.

(5) The workplace chemical list must be updated as necessary but not less than annually.

History: En. Sec. 6, Ch. 641, L. 1985; amd. Sec. 1, Ch. 15, Sp. L. June 1986.

50-78-203. Material safety data sheets. (1) Each chemical manufacturer or distributor shall provide a manufacturing or nonmanufacturing employer with the appropriate material safety data sheet upon delivery of a hazardous chemical.

(2) Each employer shall maintain the most current material safety data sheet for each hazardous chemical in the workplace. If a material safety data sheet has not been provided by the chemical manufacturer or distributor at the time a hazardous chemical is delivered to the employer, the employer shall request one in writing within 5 working days. Each employer shall maintain a copy of any correspondence sent or received by the employer in an effort to obtain a material safety data sheet for a hazardous chemical when none was provided by the chemical manufacturer or distributor.

(3) Material safety data sheets must be provided by the employer to any employee or designated representative upon request for review or copying.

History: En. Sec. 7, Ch. 641, L. 1985.

50-78-204. Employee rights. (1) An employee who may be exposed to hazardous chemicals must be informed of the potential or actual exposure and must be provided access to the workplace chemical list and to the material safety data sheet for each hazardous chemical. An employer who does not provide an employee with information on a hazardous chemical within 5 working days of the request for information, as required by this chapter, may not require the employee to work with the hazardous chemical until the information is made available.

(2) Each employee must receive training from his employer, as provided in 50-78-305 or in the OSHA standard, on the hazards of workplace chemicals and on protective measures for handling those chemicals.

(3) Each employee required to work with a hazardous chemical must be provided with appropriate personal protective equipment.

(4) No employer shall discharge, cause to be discharged, discipline, discriminate against, or initiate any adverse personnel action against any employee who exercises his rights, testifies, or assists others in exercising their rights or duties under this chapter.

(5) A waiver by an employee of the benefits, rights, or requirements of this chapter is against public policy and is void. An employer's request or requirement that an employee waive any rights under this chapter as a condition of employment is a violation of this chapter.

(6) A designated representative may act on behalf of an employee in pursuing any right or enforcement remedy under this chapter.

History: En. Sec. 10, Ch. 641, L. 1985.

Cross-References

What is unlawful, 28-2-701.

Employment relationship, Title 39, ch. 2.

50-78-205. Trade secret confidentiality. (1) An employer who believes that the name of a hazardous chemical is a trade secret may withhold the chemical name from the material safety data sheet and workplace chemical list only if:

(a) a material safety data sheet, coded to an identifying notation on each container of the hazardous chemical, is available in the work area where the hazardous chemical is present;

(b) the material safety data sheet discloses the properties and effects of the hazardous chemical;

(c) the specific chemical identity is provided to a treating physician or nurse in the event of a medical emergency, as provided for in subsection (i)(2) of the OSHA standard;

(d) the specific chemical identity is provided in nonemergency situations to a health professional providing medical or other occupational health services to an exposed employee, as provided for in subsections (i)(3) through (5) of the OSHA standard; and

(e) the employer claims that the information is a trade secret and that claim can be supported.

(2) If a person believes that disclosing certain trade information on a material safety data sheet will reveal a trade secret, a trade secret claim may be filed with the department, which shall use this procedure to determine the validity of the trade secret claim:

(a) The department shall give notice by certified mail to the person making the claim to submit trade secret substantiation information within 30 days after receipt of such notice. Failure to supply the substantiation information constitutes a waiver of the trade secret claim.

(b) The department has the responsibility to determine the validity of the trade secret claim and shall consider the trade secret substantiation information as confidential.

(c) If the department determines the trade secret claim is not valid, the department shall so notify by certified mail the person making the claim for trade secret protection, stating the basis for the decision. The person making the claim has 30 days after notification by the department to initiate judicial review in the district court of Lewis and Clark County and obtain a preliminary injunction or other court order to prevent disclosure of the trade secret.

(d) The unauthorized use or disclosure of trade secret information submitted under this section is a misdemeanor.

History: En. Sec. 11, Ch. 641, L. 1985.

Cross-References

Uniform Trade Secrets Act, Title 30, ch. 14, part 4.

Misdemeanor penalty when none specified, 46-18-212.

50-78-206. Labels. (1) An employer or distributor may not remove or deface any existing label on a container of a hazardous chemical, except that the chemical name may be concealed under trade secret protection as provided in 50-78-205.

(2) Any portable container intended for an immediate transfer of a hazardous chemical is not required to be labeled.

History: En. Sec. 8, Ch. 641, L. 1985.

Part 3

Information and Education

50-78-301. Emergency and community information. (1) An employer shall comply with the provisions of the federal Emergency Planning and Community Right-to-Know Act of 1986 or be subject to the enforcement provisions thereof.

(2) The local fire chief must be permitted onsite inspection of hazardous chemicals in any workplace, including workplaces under the control of a state agency, for the purposes of planning fire department activities in case of an emergency and reviewing compliance with this chapter. For a workplace that employs fire safety personnel, the local fire chief shall consult with the responsible fire safety official to clarify respective roles and response procedures in the event of an emergency.

(3) As a result of an inspection, the local fire chief may note and report for possible action by the county attorney or other appropriate law enforcement official any violation by an employer of a provision of this chapter or any other law pertaining to hazardous chemicals or fire safety.

(4) The local fire chief shall consult at least annually on safety and emergency considerations with each person responsible for the operation of any research, educational, or testing laboratory workplace. The consultation may result in recommendations or, under the provisions of 50-62-102, orders by the fire chief to be implemented by the laboratory operator to enhance public safety, to reduce the likelihood of emergency incidents, or to improve emergency response in the event of an accident. The person responsible for the operation of the laboratory shall contact the local fire chief at any time there is a

significant change in the location or nature of the hazardous chemicals in the workplace, initiation of any new and potentially dangerous method of processing or reacting hazardous chemicals, or any other operational change affecting emergency response considerations.

History: En. Sec. 9, Ch. 641, L. 1985; amd. Sec. 2, Ch. 15, Sp. L. June 1986; amd. Sec. 3, Ch. 536, L. 1987; amd. Sec. 36, Ch. 706, L. 1991.

Cross-References

Role and duties of County Clerk, 7-4-2611.

Duties of County Attorney relating to state matters, 7-4-2716.

Duties of chief and assistant chief of fire department, 7-33-4104.

50-78-302 through 50-78-304 reserved.

50-78-305. Employee education program. (1) Each employer shall provide, at least annually, an education and training program for all his employees using or handling hazardous chemicals. Additional instruction must be provided whenever the potential for exposure to hazardous chemicals is altered or whenever new and significant information is received by the employer concerning the hazards of a chemical. New or newly assigned employees must be provided training before working with or in a work area containing a hazardous chemical.

(2) The programs must provide instruction in:

(a) interpreting labels and material safety data sheets and the relationship between these two methods of hazard communication;

(b) the location and acute and chronic effects of hazardous chemicals used by the employees; and

(c) the safe handling, protective equipment, first-aid treatment, and cleanup and disposal procedures for hazardous chemicals.

(3) The employer shall keep a record of the dates of training sessions given to employees and the names of the employees attending.

History: En. Sec. 12, Ch. 641, L. 1985.

50-78-306. Departmental information program. (1) The department may develop and provide to any employer a suitable form of notice to inform employees of their rights under this chapter.

(2) The department may develop an education and training program to assist employers in complying with the provisions of 50-78-204.

(3) The department may develop and distribute a supply of informational leaflets on employer duties, employee rights, the effects of hazardous chemicals, and any other topic related to hazardous chemicals in the workplace.

(4) The department may contract with the Montana university system or any other public or private organization to develop and implement an information program on hazardous chemicals in the workplace.

History: En. Sec. 13, Ch. 641, L. 1985.

Part 4

Enforcement and Penalties

50-78-401. No effect on other duties or liabilities. The provision of information to an employee does not in any way affect the liability of an employer with regard to the health and safety of an employee or other person exposed to hazardous chemicals, nor does it affect the employer's responsibility to take any action to prevent the occurrence of occupational disease or accident as required under any other provision of law. The provision of information to an employee does not affect any other duty of a manufacturer, producer, or formulator to warn ultimate users of a hazardous chemical under any other provision of law.

History: **En. Sec. 14, Ch. 641, L. 1985.**

Cross-References

Liability, Title 27, ch. 1, part 7.

50-78-402. Complaints, investigation, and penalties. (1) An employee in a workplace covered by the OSHA standard who believes his employer is not complying with the provisions of the OSHA standard may report the alleged violation to the federal occupational safety and health administration.

(2) An employee who believes an employer is not complying with the provisions of this chapter may submit a written complaint to the local health officer, as defined and described in Title 50, chapter 2, part 1.

(3) If the local health officer chooses to act on the complaint, he shall:

(a) within 5 working days of receipt of the complaint, investigate the complaint and, in the event of an apparent violation, seek a corrective response from the employer;

(b) within 10 working days of receipt of a complaint, complete a report that details the findings of the investigation and the response of the employer;

(c) upon completion of the report, submit copies to the employee requesting the investigation, the county attorney, and the employer; and

(d) if the evidence suggests that the employer has violated the provisions of this chapter and the health officer does not receive a corrective response within 10 days of notifying the employer of the violation, file a complaint in the appropriate court or request appropriate action by the county attorney to prosecute the alleged violation.

(4) An employee may submit a written complaint to the county attorney.

(5) The county attorney shall investigate any complaint received and, if a violation appears to have occurred and the county attorney does not receive a corrective response within 10 days of notifying the employer of the violation, initiate appropriate court proceedings to prosecute the violation.

(6) A person found to be knowingly in violation of this chapter is guilty of a misdemeanor. Each day of violation is a separate offense.

History: **En. Sec. 15, Ch. 641, L. 1985.**

Cross-References

Duties of County Attorney relating to state matters, 7-4-2716.

Misdemeanor penalty when none specified, 46-18-212.

CHAPTER 79

NUCLEAR REGULATION

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50-79-502. Administration of compact — fees.

Chapter Cross-References

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

Disposal of hazardous wastes — regulation, Title 75, ch. 10, part 4.

Siting of nuclear facilities, Title 75, ch. 20, part 12.

Disposal of wastes — mining operations, 82-4-231.

Western Interstate Nuclear Compact — state nuclear policy, Title 90, ch. 5, part 2.

Part 1

General Provisions

50-79-101. Policy. It is the policy of the state of Montana, in furtherance of its responsibility to protect the public health and safety, to:

(1) institute and maintain a regulatory program for sources of ionizing radiation so as to provide, for compatibility with the standards and regulatory programs of the federal government, a single effective system of regulation within the state and a system consistent insofar as possible with those of other states; and

(2) institute and maintain a program to permit development and utilization of sources of ionizing radiation for peaceful purposes consistent with the health and safety of the public.

History: **En. Sec. 1, Ch. 108, L. 1967; R.C.M. 1947, 69-5801; Sec. 75-3-101, MCA 1995; redes. 50-79-101 by Sec. 13, Ch. 73, L. 1997.**

Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain clean and healthful environment, Art. IX, sec. 1, Mont. Const.

50-79-102. Purpose. It is the purpose of this chapter to provide a program:

(1) of effective regulation of sources of ionizing radiation for the protection of the occupational and public health and safety;

(2) to promote an orderly regulatory pattern within the state, among the states, and between the federal government and the state and facilitate intergovernmental cooperation with respect to use and regulation of sources of ionizing radiation to the end that duplication of regulation may be minimized;

(3) to establish procedures for assumption and performance of certain regulatory responsibilities with respect to byproduct, source, and special nuclear materials; and

(4) to permit maximum utilization of sources of ionizing radiation consistent with the health and safety of the public.

History: **En. Sec. 2, Ch. 108, L. 1967; R.C.M. 1947, 69-5802; Sec. 75-3-102, MCA 1995; redes. 50-79-102 by Sec. 13, Ch. 73, L. 1997.**

Cross-References

Occupational Disease Act of Montana, Title 39, ch. 72.

Montana Consumer Product Safety Act of 1975, Title 50, ch. 30.

Occupational Health Act of Montana, Title 50, ch. 70.

50-79-103. Definitions. The definitions used in this chapter are intended to be consistent with those used in 10 CFR 1-171 and 49 CFR 173.401 through 173.478, subpart I. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Byproduct material" means:

(a) any radioactive material (except special nuclear material) yielded in, or made radioactive by exposure to the radiation incident to, the process of producing or using special nuclear material; and

(b) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

(2) "Department" means the department of public health and human services.

(3) "Disposal" means burial in soil, release through the sanitary sewerage system, incineration, or permanent long-term storage with no intention of or provision for subsequent removal.

(4) "General license" means a license effective pursuant to rules promulgated by the department without the filing of an application to transfer, acquire, own, possess, or use quantities of or devices or equipment using quantities of byproduct, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially. General licenses are effective without the filing of applications with the department or the issuing of licensing documents to the user.

(5) "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles, but not sound or radio waves or visible, infrared, or ultraviolet light.

(6) "Large quantity radioactive material" means highway route controlled quantity as defined in 49 CFR 173.403.

(7) "Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision or agency of a political subdivision, and any legal successor, representative, agent, or agency of the foregoing, other than the United States nuclear regulatory commission, any successor, or federal agencies licensed by the nuclear regulatory commission.

(8) "Registration" means the registering with the department by the legal owner, user, or authorized representative of sources of ionizing radiation in the manner prescribed by rule.

(9) "Source material" means uranium, thorium, or any other material that the department or the United States nuclear regulatory commission declares by order to be source material or ores containing one or more of the foregoing materials in a concentration that the department or the nuclear regulatory commission declares by order to be source material after the nuclear regulatory commission has determined the material in that concentration to be source material.

(10) "Special nuclear material" means plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the department or the United States nuclear regulatory commission or any successor declares by order to be special nuclear material or any material artificially enriched by any of the foregoing but does not include source material.

(11) "Specific license" means a license issued after application to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of or devices or equipment using quantities of byproduct, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

History: En. Sec. 3, Ch. 108, L. 1967; amd. Sec. 104, Ch. 349, L. 1974; amd. Sec. 16, Ch. 140, L. 1977; R.C.M. 1947, 69-5803; amd. Sec. 1, Ch. 68, L. 1979; amd. Sec. 2, I.M. No. 84, approved Nov. 4, 1980; amd. Sec. 180, Ch. 418, L. 1995; amd. Sec. 265, Ch. 42, L. 1997; amd. Sec. 6, Ch. 73, L. 1997; Sec. 75-3-103, MCA 1995; redes. 50-79-103 by Sec. 13, Ch. 73, L. 1997.

50-79-104. Exemptions — sources, diagnosis, and therapy. (1) This chapter does not apply to the following sources or conditions:

(a) electrical equipment that is not intended primarily to produce radiation and that, by nature of design, does not produce radiation at the point of nearest approach at a weekly rate higher than one-tenth the appropriate limit for any critical organ exposed. The production testing or production servicing of such equipment is not exempt.

(b) radiation machines during process of manufacture or in storage or transit;

(c) any radioactive material while being transported in conformity with regulations adopted by the nuclear regulatory commission or any successor thereto or the interstate commerce commission and specifically applicable to the transportation of such radioactive materials.

(2) No exemptions under this section are granted for those quantities or types of activities that do not comply with the established rules promulgated by the nuclear regulatory commission or by any successor thereto.

(3) The provisions of this chapter may not be construed to limit the kind or amount of radiation that may be intentionally applied to a person for diagnostic or therapeutic purposes by or under the direction of a licensed practitioner of the healing arts.

History: (1), (2)En. Sec. 15, Ch. 108, L. 1967; Sec. 69-5815, R.C.M. 1947; (3)En. Sec. 8, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 69-5808, R.C.M. 1947; R.C.M. 1947, 69-5808(4), 69-5815; amd. Sec. 2, Ch. 68, L. 1979; Sec. 75-3-104, MCA 1995; redes. 50-79-104 by Sec. 13, Ch. 73, L. 1997.

50-79-105. Conflicting laws. Ordinances, resolutions, or regulations now or hereafter in effect of the governing body of a municipality or county relating to byproduct, source, and special nuclear materials shall not be superseded by this chapter, provided that such ordinances or regulations are and shall continue to be consistent with the provisions of this chapter, amendments thereto, and rules thereunder.

History: En. Sec. 11, Ch. 108, L. 1967; R.C.M. 1947, 69-5811; Sec. 75-3-105, MCA 1995; redes. 50-79-105 by Sec. 13, Ch. 73, L. 1997.

50-79-106. Confidentiality — trade secrets. A report of investigation or inspection or processes obtained under this chapter shall not be disclosed or opened to public inspection except as may be necessary for the performance of the functions of the department.

History: En. Sec. 6, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1975; amd. Sec. 17, Ch. 140, L. 1977; R.C.M. 1947, 69-5806(8); Sec. 75-3-106, MCA 1995; redes. 50-79-106 by Sec. 13, Ch. 73, L. 1997.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Uniform Trade Secrets Act, Title 30, ch. 14, part 4.

50-79-107. Inspections. The department or its duly authorized representatives shall have the power to enter at all reasonable times upon any private or public property within the jurisdiction of the department, other than a private dwelling, for the purpose of determining whether or not there is compliance with or violation of the provisions of this chapter and rules promulgated thereunder, and the owner, occupant, or person in charge of such property shall permit such entry and inspection. Entry into areas under the jurisdiction of the federal government shall be effected only with the concurrence of the federal government or its duly designated representative.

History: En. Sec. 7, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5807; Sec. 75-3-107, MCA 1995; redes. 50-79-107 by Sec. 13, Ch. 73, L. 1997.

Cross-References

Searches and seizures — right of private individual to be secure, Art. II, sec. 11, Mont. Const.

50-79-108. Inspection agreements and training programs. (1) The department, on behalf of the state, may enter into an agreement or agreements with the federal government, other states, or interstate agencies whereby this state shall perform, on a cooperative basis with the federal government, other states, or interstate agencies, inspections or other functions relating to control of sources of ionizing radiation.

(2) The department and any other appropriate state agency may institute training programs for the purpose of qualifying personnel to carry out the provisions of this chapter and may make said personnel available for participation in any program or programs of the federal government, other states, or interstate agencies in furtherance of the purposes of this chapter.

History: En. Sec. 10, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5810; Sec. 75-3-108, MCA 1995; redes. 50-79-108 by Sec. 13, Ch. 73, L. 1997.

Part 2

Control of Radioactive Substances

Part Cross-References

Northwest Interstate Compact on Low-Level Radioactive Waste Management, Title 50, ch. 79, part 5.

50-79-201. State radiation control agency. (1) The department is the state radiation control agency.

(2) Under the laws of this state, the department may employ, compensate, and prescribe the powers and duties of the individuals that are necessary to carry out this chapter.

(3) The department may, subject to the provisions of 50-79-410, for the protection of the occupational and public health and safety:

(a) develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing radiation;

(b) develop programs and adopt rules with due regard for compatibility with federal programs for licensing and regulation of byproduct, source, radioactive waste, and special nuclear materials and other radioactive materials. These rules must cover equipment and facilities, methods for transporting, handling, and storage of radioactive materials, permissible levels of exposure, technical qualifications of personnel, required notification of accidents and other incidents involving radioactive materials, survey methods and results, methods of disposal of radioactive materials, posting and labeling of areas and sources, and methods and effectiveness of controlling individuals in posted and restricted areas.

(c) adopt rules relating to control of other sources of ionizing radiation. These rules must cover equipment and facilities, permissible levels of exposure to personnel, posting of areas, surveys, and records.

(d) advise, consult, and cooperate with other agencies of the state, the federal government, other states, interstate agencies, political subdivisions, and groups concerned with control of sources of ionizing radiation;

(e) accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private;

(f) encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of ionizing radiation;

(g) collect and disseminate information relating to control of sources of ionizing radiation, including:

(i) maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(ii) maintenance of a file of registrants possessing sources of ionizing radiation requiring registration under this chapter and any administrative or judicial action pertaining to this chapter;

(iii) maintenance of a file of all rules relating to regulation of sources of ionizing radiation, pending or adopted, and proceedings.

History: En. Sec. 4, Ch. 108, L. 1967; amd. Sec. 83, Ch. 349, L. 1974; R.C.M. 1947, 69-5804; amd. Sec. 10, Ch. 471, L. 1995; Sec. 75-3-201, MCA 1995; redes. 50-79-201 by Sec. 13, Ch. 73, L. 1997.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

Northwest Interstate Compact on Low-Level Radioactive Waste Management, Title 50, ch. 79, part 5.

50-79-202. Licensing and registration. (1) The department may provide by rule for general or specific licensing of persons to receive, possess, or transfer radioactive materials and devices or equipment utilizing such materials. The rules shall provide for amendment, suspension, or revocation of licenses pursuant to 50-79-401 and 50-79-403.

(2) Each application for a specific license shall be in writing and shall state such information as the department by rule may determine to be necessary to decide the technical, insurance, and financial qualifications or any other qualification of the applicant as the department considers reasonable and necessary to protect the occupational and public health and safety. The department may, at any time after the filing of the application and before the expiration of the license, require further written statements and may make such inspections as the department considers necessary in order to determine whether the license should be granted, denied, modified, suspended, or revoked. All applications and statements shall be signed by the applicant or licensee. The department may require an application or statement to be made under oath or affirmation.

(3) Each license shall be in such form and contain such terms and conditions as the department may by rule prescribe.

(4) No license issued pursuant to the provisions of this chapter and no right to possess or utilize sources of ionizing radiation granted by any license may be assigned or in any manner disposed of.

(5) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules or orders issued in accordance with the provisions of this chapter.

(6) The department may require registration and inspection of persons dealing with sources of ionizing radiation which do not require a specific license and may require compliance with specific safety standards to be promulgated by the department.

(7) The department is authorized to exempt certain users from the licensing or registration requirements set forth in this section when the department makes a finding that the exemption of the users will not constitute a significant risk to the health and safety of the public.

(8) Rules promulgated pursuant to this chapter may provide for recognition of such other state or federal licenses as the department considers desirable, subject to such registration requirements as the department prescribes.

History: En. Sec. 6, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1975; amd. Sec. 17, Ch. 140, L. 1977; R.C.M. 1947, 69-5806(1) thru (7), (9); amd. Sec. 1, Ch. 574, L. 1983; Sec. 75-3-202, MCA 1995; redes. 50-79-202 by Sec. 13, Ch. 73, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-79-203. Federal-state agreements. (1) The governor, on behalf of this state, is authorized to enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by this state.

(2) Any person who, on the effective date of an agreement under subsection (1) of this section, possesses a license issued by the federal government shall be deemed to possess the same pursuant to this chapter, which shall expire either 90 days after receipt from the department of a notice of expiration of such license or on the date of expiration specified in the federal license, whichever is earlier.

History: En. Sec. 9, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5809; Sec. 75-3-203, MCA 1995; redes. 50-79-203 by Sec. 13, Ch. 73, L. 1997.

50-79-204. Records. (1) The department shall require each person who acquires, possesses, or uses a source of ionizing radiation to maintain records relating to its receipt, storage, transfer, or disposal and such other records as the department may require, subject to such exemptions as may be provided by rules.

(2) The department shall require each person who acquires, possesses, or uses a source of ionizing radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules of the department. Copies of these records and those required to be kept by subsection (1) of this section shall be submitted to the department on request.

(3) The department shall adopt reasonable regulations, compatible with those of the United States nuclear regulatory commission or the national committee on radiation protection, pertaining to reports of exposure of personnel to radiation. The regulations shall require that reports of excessive exposure be made to the individual exposed and to the department and shall make provision for periodic and terminal reports to individuals for whom personnel monitoring is required.

History: En. Sec. 8, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5808(1) thru (3); amd. Sec. 3, Ch. 68, L. 1979; Sec. 75-3-204, MCA 1995; redes. 50-79-204 by Sec. 13, Ch. 73, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 3

Disposal of Large Quantities of Radioactive Material

Part Cross-References

Northwest Interstate Compact on Low-Level Radioactive Waste Management, Title 50, ch. 79, part 5.

50-79-301. Definition. Notwithstanding the definition in 50-79-103, as used in this part "person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

History: En. 69-5817 by Sec. 1, Ch. 68, L. 1977; R.C.M. 1947, 69-5817; amd. Sec. 4, Ch. 68, L. 1979; Sec. 75-3-301, MCA 1995; redes. 50-79-301 by Sec. 13, Ch. 73, L. 1997.

50-79-302. Disposal of large quantities of radioactive material prohibited — exceptions and exclusion. (1) No person may dispose of large quantity radioactive material, byproduct material, or special nuclear material within the state of Montana.

(2) Byproduct material (except large quantity radioactive material) possessed, used, and transported for educational purposes, scientific research and development, medical research, diagnosis, and treatment, geophysical surveying, and similar uses licensed by the United States nuclear regulatory commission shall be excepted from this part, provided that such material is being or has been lawfully disposed of within Montana upon the effective date of this Act.

(3) Nothing in this part precludes the construction of a nuclear facility approved under the requirements of the Montana Major Facility Siting Act, or the mining of any raw ore, provided that such activity is not inconsistent with this part.

History: En. 69-5818, 69-5819, 69-5821 by Secs. 2, 3, 5, Ch. 68, L. 1977; R.C.M. 1947, 69-5818, 69-5819, 69-5821; amd. Sec. 3, I.M. No. 84, approved Nov. 4, 1980; Sec. 75-3-302, MCA 1995; redes. 50-79-302 by Sec. 13, Ch. 73, L. 1997.

Cross-References

Montana Major Facility Siting Act, Title 75, ch. 20.

50-79-303. Penalty. A person who knowingly or purposely disposes of large quantity radioactive material, byproduct material, or special nuclear material within Montana shall be fined an amount not more than $5,000 or be imprisoned for not more than two years, or both, for each offense. A person who negligently disposes of large quantity radioactive material, byproduct material, or special nuclear material within Montana shall be fined not more than $1,000 for each offense. In this part, each day of violation constitutes a separate offense.

History: En. 69-5820 by Sec. 4, Ch. 68, L. 1977; R.C.M. 1947, 69-5820; amd. Sec. 4, I.M. No. 84, approved Nov. 4, 1980; Sec. 75-3-303, MCA 1995; redes. 50-79-303 by Sec. 13, Ch. 73, L. 1997.

Cross-References

Classification of offenses, 45-1-201.
Felony defined, 45-2-101.
Execution of fine, 46-19-102.

50-79-304. Policy. It is the policy of the state of Montana, in furtherance of its responsibility to protect the public health and safety, under the police powers of the state and for protection of the constitutional right to a healthy environment, to prohibit the disposal of certain radioactive material.

History: En. Sec. 1, I.M. No. 84, approved Nov. 4, 1980; Sec. 75-3-304, MCA 1995; redes. 50-79-304 by Sec. 13, Ch. 73, L. 1997.

Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain clean and healthful environment, Art. IX, sec. 1, Mont. Const.

Part 4

Enforcement, Appeal, and Penalties

50-79-401. Administrative hearings. In a proceeding under this chapter for granting, suspending, revoking, or amending a license or for determining compliance with or granting exceptions from rules adopted under this chapter, the board of environmental review shall first afford an opportunity for a hearing on the record upon the request of a person whose interest may be affected by the proceeding and shall admit the person as a party to the proceeding.

History: En. Sec. 12, Ch. 108, L. 1967; amd. Sec. 84, Ch. 349, L. 1974; R.C.M. 1947, 69-5812(1); amd. Sec. 181, Ch. 418, L. 1995; Sec. 75-3-401, MCA 1995; redes. 50-79-401 by Sec. 13, Ch. 73, L. 1997.

Cross-References

Montana Administrative Procedure Act — contested case hearings, Title 2, ch. 4, part 6.

Board of Environmental Review created, 2-15-3502.

50-79-402. Emergency impoundment of materials. The department shall have the authority in the event of an emergency to impound or order the impounding of sources of ionizing radiation in the possession of any person who is not equipped to observe or who fails to observe the provisions of this chapter or any rules promulgated hereunder.

History: En. Sec. 14, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5814; Sec. 75-3-402, MCA 1995; redes. 50-79-402 by Sec. 13, Ch. 73, L. 1997.

50-79-403. Emergency orders and rules. When the department finds that an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue a rule or order reciting the existence of the emergency and requiring that such action be taken as considered necessary to meet the emergency. Notwithstanding any provision of this chapter to the contrary, the rule or order is effective immediately. A person to whom the rule or order is directed shall comply with it immediately but on application to the board shall be afforded a prompt hearing. On the basis of the hearing the emergency rule or order shall be continued, modified, or revoked by the board within 30 days after the hearing or when the emergency no longer exists.

History: En. Sec. 12, Ch. 108, L. 1967; amd. Sec. 84, Ch. 349, L. 1974; R.C.M. 1947, 69-5812(2); Sec. 75-3-403, MCA 1995; redes. 50-79-403 by Sec. 13, Ch. 73, L. 1997.

Cross-References

Emergency rules, 2-4-303.

Contested case procedure, Title 2, ch. 4, part 6.

50-79-404. Prohibited activity. (1) No person shall acquire, own, possess, or use any radioactive byproduct material, source material, special nuclear materials, or other radioactive materials, occurring naturally or

produced artificially, without having been granted a license therefor from the department or transfer to another or dispose of said materials without first having been granted approval of the department therefor in accordance with the administrative rules of the department.

(2) It shall be unlawful for any person to use, manufacture, produce, or knowingly transport, transfer, receive, acquire, own, or possess any source of ionizing radiation unless such person is licensed by or registered with the department in accordance with the provisions of this chapter and rules issued hereunder.

History: **(1)En. Sec. 16, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 69-5816, R.C.M. 1947; (2)En. Sec. 13, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 69-5813, R.C.M. 1947; R.C.M. 1947, 69-5813, 69-5816(part); Sec. 75-3-404, MCA 1995; redes. 50-79-404 by Sec. 13, Ch. 73, L. 1997.**

50-79-405. Penalty. A person who violates 50-79-404 is guilty of a misdemeanor punishable by a fine of not less than $100 and not more than $1,000 or by confinement in the county jail of not less than 30 days and not more than 90 days or by both.

History: **En. Sec. 16, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5816(part); amd. Sec. 5, Ch. 68, L. 1979; Sec. 75-3-405, MCA 1995; redes. 50-79-405 by Sec. 13, Ch. 73, L. 1997.**

Cross-References

Execution of criminal fine, 46-19-102.

General penalty, 50-1-104.

50-79-406. Injunctions. The department may maintain an action in the district court to enjoin a continuance of an act in violation of this chapter or of a rule or order issued under this chapter. If the court finds that the defendant is violating or has violated any of the provisions of this chapter or any rule or order issued under this chapter, it shall enjoin the defendant from a continuance thereof.

History: **En. Sec. 1, Ch. 323, L. 1989; Sec. 75-3-406, MCA 1995; redes. 50-79-406 by Sec. 13, Ch. 73, L. 1997.**

Cross-References

Injunctions, Title 27, ch. 19.

50-79-407. Civil penalties — deposit in general fund — injunctions not barred. (1) A person who violates this chapter or a rule or order issued under this chapter is subject to a civil penalty not to exceed $5,000 for each violation. For purposes of this section, each day of a violation is a separate violation.

(2) The department shall initiate civil proceedings in district court to recover a penalty under subsection (1).

(3) Civil penalties collected under this section must be deposited in the general fund.

(4) An action under this section does not bar enforcement of this chapter or of rules or orders issued under it by injunction or other appropriate remedy.

History: **En. Sec. 2, Ch. 323, L. 1989; Sec. 75-3-407, MCA 1995; redes. 50-79-407 by Sec. 13, Ch. 73, L. 1997.**

50-79-408 and 50-79-409 reserved.

50-79-410. State regulations no more stringent than federal regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the department may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The department may incorporate by reference comparable federal regulations or guidelines.

(2) The department may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the department makes a written finding after a public hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the department's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the department adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal regulations or guidelines may petition the department to review the rule. If the department determines that the rule is more stringent than comparable federal regulations or guidelines, the department shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The department may charge a petition filing fee in an amount not to exceed $250.

(b) A person may also petition the department for a rule review under subsection (4)(a) if the department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted department rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1).

History: En. Sec. 3, Ch. 471, L. 1995; Sec. 75-3-410, MCA 1995; redes. 50-79-410 by Sec. 13, Ch. 73, L. 1997.

Cross-References

Adoption of rule by incorporation by reference, 2-4-307.

Part 5

Northwest Interstate Compact on Low-Level Radioactive Waste Management

Part Cross-References

Western Interstate Nuclear Compact — state nuclear policy, Title 90, ch. 5, part 2.

50-79-501. Northwest Interstate Compact on Low-Level Radioactive Waste Management. The legislature of the state of Montana approves and ratifies the compact designated as the "Northwest Interstate Compact on Low-Level Radioactive Waste Management", which compact is as follows:

NORTHWEST INTERSTATE COMPACT ON LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT

ARTICLE I — Policy and Purpose

The party states recognize that low-level radioactive wastes are generated by essential activities and services that benefit the citizens of the states. It is further recognized that the protection of the health and safety of the citizens of the party states and the most economical management of low-level radioactive wastes can be accomplished through cooperation of the states in minimizing the amount of handling and transportation required to dispose of such wastes and through the cooperation of the states in providing facilities that serve the region. It is the policy of the party states to undertake the necessary cooperation to protect the health and safety of the citizens of the party states and to provide for the most economical management of low-level radioactive wastes on a continuing basis. It is the purpose of this compact to provide the means for such a cooperative effort among the party states so that the protection of the citizens of the states and the maintenance of the viability of the states' economies will be enhanced while sharing the responsibilities of radioactive low-level waste management.

ARTICLE II — Definitions

As used in this compact:

(1) "Facility" means any site, location, structure, or property, excluding federal waste facilities, used or to be used for the storage, treatment, or disposal of low-level waste.

(2) "Low-level waste" means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities which exceed applicable federal or state standards for unrestricted release. Low-level waste does not include waste containing more than 10 nanocuries of transuranic contaminants per gram of material, spent reactor fuel, or material classified as either high-level waste or waste which is unsuited for disposal by near-surface burial under any applicable federal regulations.

(3) "Generator" means any person, partnership, association, corporation, or any other entity whatsoever which, as a part of its activities, produces low-level radioactive waste.

(4) "Host state" means a state in which a facility is located.

ARTICLE III — Regulatory Practices

Each party state hereby agrees to adopt practices which will require low-level waste shipments originating within its borders and destined for a facility within another party state to conform to the applicable packaging and transportation requirements and regulations of the host state. Such practices shall include:

(1) maintaining an inventory of all generators within the state that have shipped or expect to ship low-level waste to facilities in another party state;

(2) periodic unannounced inspection of the premises of such generators and the waste management activities thereon;

(3) authorization of the containers in which such waste may be shipped and a requirement that generators use only that type of container authorized by the state;

(4) assurance that inspections of the carriers which transport such waste are conducted by proper authorities and appropriate enforcement action is taken for violations;

(5) after receiving notification from a host state that a generator within the party state is in violation of applicable packaging or transportation standards, taking appropriate action to assure that such violations do not recur. Such action may include inspection of every individual low-level waste shipment by that generator.

Each party state may impose fees upon generators and shippers to recover the cost of the inspections and other practices under this article. Nothing in this article shall be construed to limit any party state's authority to impose additional or more stringent standards on generators or carriers than those required under this article.

ARTICLE IV — Regional Facilities

(1) Facilities located in any party state, other than facilities established or maintained by individual low-level waste generators for the management of their own low-level waste, shall accept low-level waste generated in any party state if such waste has been packaged and transported according to applicable laws and regulations.

(2) No facility located in any party state may accept low-level waste generated outside the region comprising the party states, except as provided in Article V.

(3) Until such time as paragraph (2) of this article takes effect as provided in Article VI, facilities located in any party state may accept low-level waste generated outside of any of the party states only if such waste is accompanied by a certificate of compliance issued by an official of the state in which such waste shipment originated. Such certificate must be in such form as may be required by the host state and shall contain at least the following:

(a) the generator's name and address;

(b) a description of the contents of the low-level waste container;

(c) a statement that the low-level waste being shipped has been inspected by the official who issued the certificate or by his agent or by a representative of the United States Nuclear Regulatory Commission and was found to have been packaged in compliance with applicable federal regulations and such additional requirements as may be imposed by the host state;

(d) a binding agreement by the state of origin to reimburse any party state for any liability or expense incurred as a result of an accidental release of such waste during shipment or after such waste reaches the facility.

(4) Each party state shall cooperate with the other party states in determining the appropriate site of any facility that might be required within the region comprising the party states in order to maximize public health and

safety while minimizing the use of any one party state as the host of such facilities on a permanent basis. Each party state further agrees that decisions regarding low-level waste management facilities in its region will be reached through a good faith process which takes into account the burdens borne by each of the party states as well as the benefits each has received.

(5) The party states recognize that the issue of hazardous chemical waste management is similar in many respects to that of low-level waste management. Therefore, in consideration of the state of Washington allowing access to its low-level waste disposal facility by generators in other party states, party states such as Oregon and Idaho, which host hazardous chemical waste disposal facilities, will allow access to such facilities by generators within other party states. Nothing in this compact may be construed to prevent any party state from limiting the nature and type of hazardous chemical or low-level wastes to be accepted at facilities within its borders or from ordering the closure of such facilities, so long as such action by a host state is applied equally to all generators within the region composed of the party states.

(6) Any host state may establish a schedule of fees and requirements related to its facilities to assure that closure, perpetual care, and maintenance and contingency requirements are met, including adequate bonding.

ARTICLE V — Northwest Low-Level Waste Compact Committee

The Governor of each party state shall designate one official of that state as the person responsible for administration of this compact. The officials so designated shall together comprise the Northwest Low-Level Waste Compact Committee. The committee shall meet as required to consider matters arising under this compact. The parties shall inform the committee of existing regulations concerning low-level waste management in their states and shall afford all parties a reasonable opportunity to review and comment upon any proposed modifications in such regulations. Notwithstanding any provision of Article IV to the contrary, the committee may enter into arrangements with states, provinces, individual generators, or regional compact entities outside the region comprising the party states for access to facilities on such terms and conditions as the committee may deem appropriate. However, it shall require a two-thirds vote of all such members, including the affirmative vote of the member of any party state in which a facility affected by such arrangement is located, for the committee to enter into such arrangement.

ARTICLE VI — Eligible Parties and Effective Date

(1) Each of the following states is eligible to become a party to this compact: Alaska, Hawaii, Idaho, Montana, Oregon, Utah, Washington, and Wyoming. As to any eligible party, this compact shall become effective upon enactment into law by that party, but it shall not become initially effective until enacted into law by two states. Any party state may withdraw from this compact by enacting a statute repealing its approval.

(2) After the compact has initially taken effect pursuant to paragraph (1) of this article, any eligible party state may become a party to this compact by the execution of an executive order by the Governor of the state. Any state which becomes a party in this manner shall cease to be a party upon the final adjournment of the next general or regular session of its Legislature or July 1,

1983, whichever occurs first, unless the compact has by then been enacted as a statute by that state.

(3) Paragraph (2) of Article IV of this compact shall take effect on July 1, 1983, if consent is given by Congress. As provided in Public Law 96-573, Congress may withdraw its consent to the compact after every 5-year period.

ARTICLE VII — Severability

If any provision of this compact or its application to any person or circumstance is held to be invalid, all other provisions of this compact and the application of all of its provisions to all other persons and circumstances shall remain valid, and to this end the provisions of this compact are severable.

History: En. Sec. 1, Ch. 242, L. 1983; Sec. 75-3-501, MCA 1995; redes. 50-79-501 by Sec. 13, Ch. 73, L. 1997.

50-79-502. Administration of compact — fees. (1) The department of public health and human services, as the state radiation control agency, shall administer the provisions of the compact.

(2) The department may assess and collect fees for services rendered in inspecting and regulating low-level radioactive waste generators, transporters, and disposal facilities. The fees must cover the department's costs for those services and must be deposited in the state special revenue fund for use by the department. State and local government agencies, including the university system, are exempt from the payment of fees.

(3) The department may adopt rules under the authority contained in 50-79-201(3)(b) to implement the provisions of this compact.

History: En. Sec. 2, Ch. 242, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 182, Ch. 418, L. 1995; amd. Sec. 7, Ch. 73, L. 1997; Sec. 75-3-502, MCA 1995; redes. 50-79-502 by Sec. 13, Ch. 73, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Fund structure, 17-2-102.

TITLE 51

RESERVED

TITLE 52

FAMILY SERVICES

Ch.
1. Administration.
2. Children's Services.
3. Adult Services.
4. Services to the Disabled.
5. Corrections.
6. Battered Spouses.

CHAPTER 1

ADMINISTRATION

Part 1 — General

52-1-101. Purpose.
52-1-102. Definitions.
52-1-103. Powers and duties of department.
52-1-104. Department authorized to provide and set standards for supplementary payments.
52-1-105. Repealed.
52-1-106 through 52-1-109 reserved.
52-1-110. County contribution for salaries and travel of protective services employees.

Part 2 — Local Service Areas

52-1-201. Local service areas.
52-1-202. Repealed.
52-1-203. Repealed.

Part 1
General

52-1-101. Purpose. It is the public policy of the legislature to reduce duplication and fragmentation of services to youth, families, and senior citizens by creating a department that shall develop and maintain consolidated programs and services, except youth correctional services, within available resources, and a planned continuum of services to:

(1) provide protective services to ensure the health, welfare, and safety of children and adults who are in danger of abuse, neglect, or exploitation within communities; and

(2) provide supportive services to enable senior citizens to maintain their independence.

History: En. Sec. 3, Ch. 609, L. 1987; amd. Sec. 333, Ch. 546, L. 1995.

52-1-102. Definitions. Unless the context requires otherwise, in this title, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Director" means the director of public health and human services provided for in 2-15-2201.

History: **En. Sec. 4, Ch. 609, L. 1987; amd. Sec. 334, Ch. 546, L. 1995.**

52-1-103. Powers and duties of department. The department shall:

(1) administer and supervise all forms of child and adult protective services;

(2) act as the lead agency in coordinating and planning services to children with multiagency service needs;

(3) establish a system of councils at the state and local levels to make recommendations and to advise the department on issues, including children's issues;

(4) provide the following functions, as necessary, for youth in need of care:

(a) intake, investigation, case management, and client supervision;

(b) placement in youth care facilities;

(c) contracting for necessary services;

(d) protective services day care; and

(e) adoption;

(5) register or license youth care facilities, child-placing agencies, day-care facilities, community homes for persons with developmental disabilities, community homes for severely disabled persons, and adult foster care facilities;

(6) act as lead agency in implementing and coordinating child-care programs and services under the Montana Child Care Act;

(7) administer the interstate compact for children;

(8) (a) administer child abuse prevention services funded through child abuse grants and the Montana children's trust fund provided for in Title 41, chapter 3, part 7; and

(b) administer elder abuse prevention services;

(9) develop a statewide youth services and resources plan that takes into consideration local needs;

(10) administer services to the aged;

(11) provide consultant services to:

(a) facilities providing care for adults who are needy, indigent, or dependent or who have disabilities; and

(b) youth care facilities;

(12) use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(13) contract, as necessary, with the county board of welfare for administration of child and adult protection services for that county; and

(14) adopt rules necessary to carry out the purposes of 41-3-1126 and this chapter.

History: **En. Sec. 5, Ch. 609, L. 1987; amd. Sec. 61, Ch. 83, L. 1989; amd. Sec. 7, Ch. 692, L. 1989; amd. Sec. 8, Ch. 655, L. 1991; amd. Sec. 1, Ch. 91, L. 1993; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 22, Ch. 458, L. 1995; amd. Sec. 335, Ch. 546, L. 1995; amd. Sec. 11, Ch. 171, L. 1997; amd. Sec. 49, Ch. 472, L. 1997.**

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Montana Child Care Act, Title 52, ch. 2, part 7.

52-1-104. Department authorized to provide and set standards for supplementary payments. (1) Except as provided in this section, the department shall have the authority to provide supplementary payments from state funds to recipients of supplemental security income for the aged, blind, or disabled under Title XVI of the Social Security Act of the United States or any future amendments thereto.

(2) The department shall have the authority to establish standards of assistance and apply them uniformly throughout the state and to determine individuals eligible for and the amount of such supplementary payments under federal and state guidelines.

(3) The department may not provide supplementary payments under subsection (1) for persons who are residents of category B personal-care facilities licensed pursuant to 50-5-227.

History: (1)En. 71-210.2 by Sec. 1, Ch. 358, L. 1974; Sec. 71-210.2, R.C.M. 1947; (2)En. 71-210.3 by Sec. 2, Ch. 358, L. 1974; Sec. 71-210.3, R.C.M. 1947; R.C.M. 1947, 71-210.2, 71-210.3; Sec. 53-2-204, MCA 1985; redes. 52-1-104 by Sec. 114, Ch. 609, L. 1987; amd. Sec. 5, Ch. 590, L. 1993.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

52-1-105. Repealed. Sec. 567, Ch. 546, L. 1995.

History: En. Sec. 9, Ch. 609, L. 1987.

52-1-106 through 52-1-109 reserved.

52-1-110. County contribution for salaries and travel of protective services employees. (1) The salaries and travel expenses, as provided in 2-18-501 through 2-18-503, of protective services employees must be paid by the department of public health and human services. The board of county commissioners of a county that has not become state-assumed pursuant to 53-2-811 shall reimburse the department of public health and human services from county poor funds in an amount equal to that county's expenditures for salaries, travel expenses, and indirect costs of protective services employees in fiscal year 1987, adjusted for annual inflation.

(2) A county that was state-assumed prior to 1987 but at a later date reassumes responsibility pursuant to 53-2-811 is responsible for reimbursement of salaries, travel expenses, and indirect costs up to the county's calculated level of expenditures for fiscal year 1987 as if the county had not been state-assumed.

(3) On or before the 20th day of the month following the month for which payments were made for protective services employees' salaries, travel, and indirect costs, the department of public health and human services shall present to the board of county commissioners a claim for the required reimbursement. The board of county commissioners shall make the reimbursement within 20 days after the presentation of the claim.

(4) The department is responsible for administrative costs associated with the department's provision of protective services, including costs for rent, telephones, postage, and equipment.

History: En. Sec. 14, Ch. 609, L. 1987; amd. Sec. 9, Ch. 561, L. 1993; amd. Sec. 1, Ch. 443, L. 1995; amd. Sec. 336, Ch. 546, L. 1995.

Part 2
Local Service Areas

52-1-201. Local service areas. The department shall organize its field offices into local service areas. The director shall take into consideration geographic boundaries used by local governments, judicial districts, and service agencies when creating local service areas.

History: En. Sec. 6, Ch. 609, L. 1987.

52-1-202. Repealed. Sec. 16, Ch. 171, L. 1997.

History: En. Sec. 7, Ch. 609, L. 1987; amd. Sec. 2, Ch. 91, L. 1993.

52-1-203. Repealed. Sec. 16, Ch. 171, L. 1997.

History: En. Sec. 8, Ch. 609, L. 1987; amd. Sec. 3, Ch. 91, L. 1993.

CHAPTER 2
CHILDREN'S SERVICES

Part 1 — Child Welfare Services

52-2-101. Definitions.
52-2-102. Recognition of parental control of children — placement with extended family.
52-2-103 through 52-2-110 reserved.
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52-2-724. Provisional license — provisional registration certificate.
52-2-725. Renewal license — registration certificate.
52-2-726. Denial, cancellation, reduction, revocation, and nonrenewal of licenses and registration certificates — fair hearing.
52-2-727 through 52-2-730 reserved.
52-2-731. Standards for day care.
52-2-732. Licensees or registrants to maintain records, furnish reports, and permit inspections.
52-2-733. Periodic visits to facilities by department — investigations — consultation with licensees and registrants.
52-2-734. Fire safety — certification required.
52-2-735. Health protection — certification required.
52-2-736 through 52-2-740 reserved.
52-2-741. Penalty — remedies.

Part 1
Child Welfare Services

Part Cross-References

Assistance to facilitate school attendance, 20-5-107.

Child abuse and neglect, Title 41, ch. 3.

52-2-101. Definitions. As used in this part, the following definitions apply:

(1) "Child welfare services" means the establishing, extending, and strengthening of child welfare services, especially in predominantly rural areas, for the protection and care of abused or neglected children.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

History: (1), (2)En. Sec. 2, Part 6, Ch. 82, L. 1937; amd. Sec. 25, Ch. 264, L. 1955; amd. Sec. 49, Ch. 121, L. 1974; Sec. 71-706, R.C.M. 1947; (3), (4)En. 71-201.1 by Sec. 19, Ch. 121, L. 1974; Sec. 71-201.1, R.C.M. 1947; R.C.M. 1947, 71-201.1, 71-706; amd. Sec. 2, Ch. 447, L. 1987; amd. Sec. 87, Ch. 609, L. 1987; Sec. 53-4-101, MCA 1989; redes. 52-2-101 by Code Commissioner, 1991; amd. Sec. 9, Ch. 249, L. 1991; amd. Sec. 6, Ch. 356, L. 1993;

amd. Sec. 56, Ch. 18, L. 1995; amd. Sec. 23, Ch. 458, L. 1995; amd. Sec. 337, Ch. 546, L. 1995.

52-2-102. Recognition of parental control of children — placement with extended family. This title may not be construed as authorizing any state or county official, agent, or representative, in carrying out any of the provisions of this title, to take charge of any child over the objection of either of the parents of the child or the person standing in loco parentis to the child, except pursuant to a proper court order. When it is necessary to take charge of a child pursuant to a court order, the department shall, when it is in the best interests of the child and when the home is approved by the department, place the child with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, prior to placing the child in an alternative protective or residential facility.

History: En. Subd. (k) and (l), Sec. 4, Part 6, Ch. 82, L. 1937; R.C.M; 1947, 71-713(part); Sec. 53-4-102, MCA 1989; redes. 52-2-102 by Code Commissioner, 1991; amd. Sec. 2, Ch. 494, L. 1995.

Cross-References

Child abuse and neglect, Title 41, ch. 3.

52-2-103 through 52-2-110 reserved.

52-2-111. Administrative duties of department. Subject to the authority and regulations of the department and in cooperation with the federal government, the department shall:

(1) adopt rules necessary to carry out the purposes of this part;

(2) administer or supervise all child welfare services of the state.

History: En. Subd. (a), (b), (c), (d), Sec. 4, Part 6, Ch. 82, L. 1937; Subd. (a) rep. Sec. 10, Ch. 117, L. 1941; amd. Sec. 31, Ch. 121, L. 1974; R.C.M. 1947, 71-708; amd. Sec. 88, Ch. 609, L. 1987; Sec. 53-4-111, MCA 1989; redes. 52-2-111 by Code Commissioner, 1991; amd. Sec. 146, Ch. 418, L. 1995; amd. Sec. 338, Ch. 546, L. 1995.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

52-2-112. Duty to strengthen child welfare services. The department shall make provision for establishing and strengthening child welfare services, including protective services, and for care of children in registered or licensed family foster homes, child care agencies, group homes, or treatment facilities. Payment provided under this section is made under the provisions of 41-3-1122 and 41-3-1115.

History: En. Subd. (e), Sec. 4, Part 6, Ch. 82, L. 1937; amd. Sec. 19, Ch. 129, L. 1939; amd. Sec. 32, Ch. 121, L. 1974; R.C.M. 1947, 71-709; amd. Sec. 5, Ch. 297, L. 1981; amd. Sec. 31, Ch. 465, L. 1983; Sec. 53-4-112, MCA 1989; redes. 52-2-112 by Code Commissioner, 1991; amd. Sec. 24, Ch. 458, L. 1995.

Cross-References

Policy regarding child abuse and neglect, 41-3-101.

Responsibility of providing child protective services, 41-3-302.

One-step licensing — inspection by other Department, Title 50, ch. 8.

52-2-113. Child rehabilitation — duties of department. The department shall:

(1) enforce all laws pertaining to children and take the initiative in all matters involving the interest of abused or neglected children;

(2) use funds allocated or appropriated to the department for the purpose of providing for the special medical or material needs of children with developmental disabilities or children with physical disabilities who are eligible for department programs;

(3) cooperate for the purposes of this part with all reputable child-helping and child-placing agencies; and

(4) inspect and register or license youth care facilities, child-placing agencies, and adoption agencies.

History: En. Subd. (f), (g), (h), Sec. 4, Part 6, Ch. 82, L. 1937; amd. Sec. 9, Ch. 117, L. 1941; amd. Sec. 27, Ch. 264, L. 1955; amd. Sec. 35, Ch. 37, L. 1977; R.C.M. 1947, 71-710; amd. Sec. 1, Ch. 398, L. 1987; amd. Sec. 89, Ch. 609, L. 1987; Sec. 53-4-113, MCA 1989; redes. 52-2-113 by Code Commissioner, 1991; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 25, Ch. 458, L. 1995; amd. Sec. 50, Ch. 472, L. 1997.

Cross-References

Minors, Title 41.

Child day-care centers, Title 52, ch. 2, part 7.

52-2-114. Department to supervise importation and exportation of children. The department shall supervise the importation and exportation of children.

History: En. Subd. (i), Sec. 4, Part 6, Ch. 82, L. 1937; R.C.M. 1947, 71-711; Sec. 53-4-114, MCA 1989; redes. 52-2-114 by Code Commissioner, 1991.

Cross-References

Interstate placement of children, Title 41, ch. 4.

52-2-115. Department to accept custody of children committed by courts. The department shall accept the guardianship or custody of children committed by the courts to the department and arrange for their care.

History: En. Subd. (j), Sec. 4, Part 6, Ch. 82, L. 1937; amd. Sec. 20, Ch. 129, L. 1939; R.C.M. 1947, 71-712; amd. Sec. 90, Ch. 609, L. 1987; Sec. 53-4-115, MCA 1989; redes. 52-2-115 by Code Commissioner, 1991.

Cross-References

Youth in need of care — dispositional hearing, 41-3-406.

Disposition of youth in need of intervention or youth who violate consent adjustments, 41-5-1512.

Disposition of delinquent youth, 41-5-1513.

52-2-116. Department to assist other agencies. The department shall assist other departments, agencies, and public and private institutions of the state and federal government, when so requested, by performing services in conformity with the purposes of this part and particularly such services and duties as may be assigned to it by any state board composed of state officers, provided such services and duties are legally within the duties of such state board.

History: En. Subd. (k) and (l), Sec. 4, Part 6, Ch. 82, L. 1937; R.C.M. 1947, 71-713(part); Sec. 53-4-116, MCA 1989; redes. 52-2-116 by Code Commissioner, 1991.

52-2-117. Indian child welfare specialist. (1) The director of the department shall appoint a qualified person to act as an Indian child welfare specialist.

(2) The duties of the specialist include:

(a) developing Indian foster homes and other Indian placement resources;

(b) providing technical advice to tribal, state, and county agencies and district courts on matters pertaining to Indian child welfare;

(c) providing assistance in negotiating cooperative agreements to provide foster care services to Indian children;

(d) conducting training seminars on implementing the Indian Child Welfare Act of 1978 (25 U.S.C. 1901, et seq.);

(e) applying for and accepting grants and other funds for Indian child welfare activities;

(f) developing and maintaining a list of attorneys to represent indigent parents and Indian custodians in Indian child welfare proceedings;

(g) making recommendations to the department on legislation and rules concerning Indian child welfare matters; and

(h) performing other duties concerning Indian child welfare matters as determined by the director.

History: En. Sec. 1, Ch. 259, L. 1987; Sec. 53-4-117, MCA 1989; redes. 52-2-117 by Code Commissioner, 1991; amd. Sec. 1, Ch. 144, L. 1995.

52-2-118. Repealed. Sec. 19, Ch. 579, L. 1993.

History: En. Sec. 1, Ch. 447, L. 1987; Sec. 53-4-118, MCA 1989; redes. 52-2-118 by Code Commissioner, 1991; amd. Sec. 1, Ch. 262, L. 1991.

52-2-119 and 52-2-120 reserved.

52-2-121. Development of state permanent placement policy and plan. The department shall develop a state permanent placement policy and plan for children in the state's child welfare system. The state plan must include, at a minimum:

(1) a plan that includes locating a permanent home for any child that has been in foster care for more than 1 year;

(2) the number of children impacted by the plan;

(3) identification of priorities in placement alternatives;

(4) identification of various strategies for improvement of the child welfare system and of an action plan to implement these strategies;

(5) interim findings and identification of barriers to permanent placement of children and recommendations to reduce or eliminate those barriers; and

(6) steps taken by the department to sustain systemic change in placement of children in out-of-home care.

History: En. Sec. 1, Ch. 326, L. 1995.

Cross-References

Montana Family Policy Act, Title 41, ch. 7, part 1.

Part 2

Multiagency Children's Services

52-2-201. Purpose. It is the purpose of this part to strengthen and improve children's services in Montana by requiring interagency cooperation regarding the provision of services to children.

History: En. Sec. 1, Ch. 655, L. 1991.

52-2-202. Definitions. For purposes of this part, unless the context requires otherwise, the following definitions apply:

(1) "Children with multiagency service needs" means children under 18 years of age who have a need for services that are available from more than one state agency.

(2) "Services" means publicly funded social services for children, including public education, child protective services, mental health services, child health care, and related services.

(3) "State agency" means:

(a) the department of corrections provided for in 2-15-2301;

(b) the board of crime control provided for in 2-15-2006;

(c) the department of public health and human services provided for in 2-15-2201; and

(d) the superintendent of public instruction provided for in 2-15-701.

History: En. Sec. 2, Ch. 655, L. 1991; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 147, Ch. 418, L. 1995; amd. Sec. 339, Ch. 546, L. 1995.

52-2-203. Cooperative agreement regarding children's services. (1) State agencies shall enter into a cooperative agreement for the purpose of coordinating services to children with multiagency service needs. However, the existing state and community interagency service delivery and planning process for developmental disabilities may not be affected by this section.

(2) The cooperative agreement may:

(a) include a functional definition of "children with multiagency service needs";

(b) identify the responsibilities of each state agency in relation to children with multiagency service needs;

(c) describe agreements to recognize duplicated services and to fill gaps in services to children with multiagency service needs;

(d) define a process for the resolution of disputes between state agencies that relate to specific areas of an agency's service responsibilities;

(e) establish local interagency staffing groups that consist of the following members:

(i) a local representative from each state agency who is authorized to commit resources and make decisions on behalf of the agency represented;

(ii) representatives of local school districts, youth probation offices, and other public agencies serving youth; and

(iii) representatives of local private youth service agencies;

(f) provide that if a state agency is not able to provide all the services that a child requires, the agency may submit the child's case history to the local staffing group for the provision of multiagency services to the child;

(g) provide that a local interagency staffing group shall meet at the request of any one of its members to consider the provision of services to a child with multiagency service needs;

(h) provide for confidentiality of a child's case records in the same manner as provided in 41-3-205; and

(i) provide for review and necessary revision of the cooperative agreement at least once annually.

(3) For purposes of this part, the department of public health and human services is designated as the lead agency in coordinating and planning services to children with multiagency service needs. Other state agencies shall cooperate with the department of public health and human services to ensure minimum duplication and maximum coordination of services for children in Montana.

History: En. Sec. 3, Ch. 655, L. 1991; amd. Sec. 340, Ch. 546, L. 1995.

Cross-References

Community-based services for persons with developmental disabilities, Title 53, ch. 20, part 2.

52-2-204 through 52-2-210 reserved.

52-2-211. County interdisciplinary child information team. (1) The following persons and agencies operating within a county may by written agreement form a county interdisciplinary child information team:

(a) the youth court;
(b) the county attorney;
(c) the department of public health and human services;
(d) the county superintendent of schools;
(e) the sheriff;
(f) the chief of any police force;
(g) the superintendents of public school districts; and
(h) the department of corrections.

(2) The persons and agencies signing a written agreement under subsection (1) may by majority vote allow the following persons to sign the written agreement and join the team:

(a) physicians, psychologists, psychiatrists, nurses, and other providers of medical and mental health care;
(b) entities operating private elementary and secondary schools;
(c) attorneys; and
(d) a person or entity that has or may have a legitimate interest in one or more children that the team will serve.

(3) (a) The members of the team or their designees may form one or more auxiliary teams for the purpose of providing service to a single child, a group of children, or children with a particular type of problem or for any other purpose. Auxiliary teams are subject to the written agreement.

(b) A member of an auxiliary team must be a person who has personal knowledge of or experience with the child or children in the member's respective field.

(4) The purpose of the team and written agreement is to facilitate the exchange and sharing of information that one or more team members may be able to use in serving a child in the course of their professions and occupations, including but not limited to abused or neglected children, delinquent youth, and youth in need of intervention. Information regarding a child that a team member supplies to other team members or that is disseminated to a team member under 41-3-205 or 41-5-215(2) and (3) may not be disseminated beyond the team.

(5) The terms of the written agreement must provide for the rules under which the team will operate, the method by which information will be shared, distributed, and managed, and any other matters necessary to the purpose and functions of the team.

(6) The terms of the written agreement must state how the team will coordinate its efforts with interdisciplinary child protective teams as provided in 41-3-108 and youth placement committees as provided for in 41-5-121.

(7) To the extent that the county interdisciplinary child information team is involved in a proceeding that is held prior to adjudication of a youth in youth court, the team satisfies the requirements of 20 U.S.C. 1232g(b)(1)(E)(ii)(I) of the Family Educational Rights and Privacy Act of 1974. Montana school districts may release education records to the team. The terms of the written agreement described in subsection (5) must include a requirement that the officials and authorities to whom the information is disclosed certify in writing to the school district that is releasing the education records that the education records or information from the education records will not be disclosed to any other party without the prior written consent of the parent or guardian of the student.

History: En. Sec. 1, Ch. 510, L. 1991; amd. Sec. 26, Ch. 458, L. 1995; amd. Sec. 7, Ch. 466, L. 1995; amd. Sec. 341, Ch. 546, L. 1995; amd. Sec. 58, Ch. 550, L. 1997; amd. Sec. 2, Ch. 564, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 564 in (4) inserted reference to 41-5-215(3). Amendment effective October 1, 1999.

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

Child abuse and neglect, Title 41, ch. 3.

Part 3

Multiagency Service Placement Plan

52-2-301. State policy. The legislature declares that it is the policy of this state:

(1) to the extent that funds are available and using a managed care system, to provide for and encourage the development of a continuum of quality education, treatment, and services for the children of this state with multiagency service needs;

(2) to serve children with multiagency service needs either in their homes or in the least restrictive setting that is most appropriate to their needs as provided in 52-2-306 and 52-2-307;

(3) to serve children with multiagency service needs within the state and use out-of-state providers as a last resort.

History: En. Sec. 2, Ch. 324, L. 1993.

52-2-302. Definitions. The following definitions apply to this part:

(1) "Child with multiagency service needs" means a child under 18 years of age who has a need for services that are available from more than one state agency.

(2) "Least restrictive setting" means a setting in which a child with multiagency service needs is served:

(a) within the child's family or community; or

(b) outside the child's family or community where the needed services are not available within the child's family or community and where the setting is determined to be the most appropriate alternative setting based on:

(i) the safety of the child and others;

(ii) ethnic and cultural norms;

(iii) preservation of the family;

(iv) services needed by the child and the family;

(v) the geographic proximity to the child's family and community if proximity is important to the child's treatment or does not adversely affect the child's treatment.

(3) "Local agency" means a local interagency staffing group formed pursuant to 52-2-203 or parents who are seeking placement of a child with multiagency service needs and who is suffering from mental, behavioral, or emotional disorders.

(4) "Managed care" means control of the provision of services to a defined population through a planned delivery system.

(5) "Provider" means an agency of state or local government, a person, or a program authorized to provide treatment or services to a child with multiagency service needs who is suffering from mental, behavioral, or emotional disorders.

(6) "Request for proposals" has the meaning as defined in 18-4-301.

(7) "Services" has the meaning as defined in 52-2-202.

History: En. Sec. 1, Ch. 324, L. 1993.

52-2-303. Multiagency service placement plan committee — membership — administration. (1) There is a multiagency service placement plan committee.

(2) The committee is composed of the following members:

(a) an appointee of the director of the department of public health and human services;

(b) an appointee of the superintendent of public instruction; and

(c) an appointee of the director of the department of corrections.

(3) The committee is attached to the department of public health and human services for administrative purposes only as provided in 2-15-121.

(4) Except as provided in this section, the committee must be administered in accordance with 2-15-122.

History: En. Sec. 3, Ch. 324, L. 1993; amd. Sec. 148, Ch. 418, L. 1995; amd. Sec. 342, Ch. 546, L. 1995.

52-2-304. Committee duties. The committee established in 52-2-303 shall:

(1) assist the department in the development of the plan required by 52-2-305;

(2) develop policies aimed at allowing local agencies, through a managed care system, to access funding for services for children with multiagency service needs:

(a) that are currently provided by out-of-state providers; and

(b) who may have a future need to obtain services provided by out-of-state providers unless in-state services are developed; and

(3) advise local agencies to ensure that the agencies comply with applicable statutes, administrative rules, and department policy in making any determination that a child with multiagency service needs cannot be served by an in-state provider.

History: En. Sec. 4, Ch. 324, L. 1993.

52-2-305. Multiagency service placement plan required. The department and the committee established in 52-2-303 shall develop a written plan for limiting placement of children with multiagency service needs with out-of-state providers. The plan must adhere to the policy set forth in 52-2-301 and as a minimum must include:

(1) an explanation of how the range and quality of services necessary will be developed for children with multiagency service needs in order for those children to receive quality services from in-state providers;

(2) changes needed in rules regarding classification, reimbursement rates, or licensing of providers who may be used;

(3) flexible funding strategies, pooling of resources, and strategies for the development and provision of a broad range of services to assist in returning children with multiagency service needs from out-of-state providers, limiting the placement of other children with multiagency service needs with out-of-state providers, and maintaining children with multiagency service needs within the least restrictive state setting;

(4) a description of those instances in which children with multiagency service needs may continue to be placed with out-of-state providers;

(5) the amount and source of money needed to implement the plan;

(6) a current description of the children with multiagency service needs that, as a minimum, include services:

(a) being received and the cost of the services;

(b) needed in the least restrictive setting and an estimated cost of the services; and

(7) other information necessary to implement the purposes of this part.

History: En. Sec. 5, Ch. 324, L. 1993.

52-2-306. Out-of-state placements limited. (1) Until the plan required by 52-2-305 is implemented, the department may approve the placement of a child with multiagency service needs with an out-of-state provider after October 1, 1993, only if:

(a) the provider is located closer to the child's home than is an alternative in-state provider or equally appropriate, individualized in-state services are not available or cannot be developed for the child for up to 100% of the cost of an out-of-state provider for which application is being made or would be made on behalf of the child; and

(b) placement of the child is approved by the local interagency staffing group formed pursuant to 52-2-203.

(2) After the plan required by 52-2-305 is completed and submitted to the department, the department shall adopt rules implementing the plan. Placement of a child with multiagency service needs with an out-of-state provider may be approved by the department only if the child is placed in accordance with the rules implementing the plan.

History: En. Sec. 6, Ch. 324, L. 1993.

52-2-307. Department to use requests for proposals from in-state providers. (1) The department shall:

(a) continuously group children with multiagency service needs placed with out-of-state providers into categories according to the type of treatment received by the children;

(b) notify in-state providers of the number of children in each category, the types of treatment being received by the children, and the cost to the state of the treatment provided; and

(c) use the request for proposals process to solicit in-state providers. If there is no appropriate in-state response to a request for proposals under this section, alternative resources may be sought.

(2) A decision by the department not to place a child with multiagency service needs with a particular provider is not subject to a contested case procedure.

History: **En. Sec. 7, Ch. 324, L. 1993.**

52-2-308. Rulemaking. The department shall adopt rules necessary to implement 52-2-301 through 52-2-307. The rules must be adopted in cooperation with the committee established in 52-2-303.

History: **En. Sec. 8, Ch. 324, L. 1993.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 4

Child Adoption Agencies (Repealed. Sec. 171, Ch. 480, L. 1997)

Part Compiler's Comments

Histories of Repealed Sections:

52-2-401. En. Sec. 1, Ch. 179, L. 1949; amd. Sec. 1, Ch. 121, L. 1974; R.C.M. 1947, 10-701; amd. Sec. 175, Ch. 575, L. 1981; amd. Sec. 91, Ch. 609, L. 1987; Sec. 53-4-401, MCA 1989; redes. 52-2-401 by Code Commissioner, 1991; amd. Sec. 343, Ch. 546, L. 1995.

52-2-402. En. Sec. 2, Ch. 179, L. 1949; R.C.M. 1947, 10-702; Sec. 53-4-402, MCA 1989; redes. 52-2-402 by Code Commissioner, 1991.

52-2-403. En. Sec. 3, Ch. 179, L. 1949; amd. Sec. 1, Ch. 156, L. 1957; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 10-703(part); Sec. 53-4-403, MCA 1989; redes. 52-2-403 by Code Commissioner, 1991.

52-2-404. En. Sec. 3, Ch. 179, L. 1949; amd. Sec. 1, Ch. 156, L. 1957; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 10-703(part); Sec. 53-4-404, MCA 1989; redes. 52-2-404 by Code Commissioner, 1991.

52-2-405. (1)En. Sec. 4, Ch. 179, L. 1949; amd. Sec. 49, Ch. 121, L. 1974; Sec. 10-704, R.C.M. 1947; (2)En. Sec. 3, Ch. 179, L. 1949; amd. Sec. 1, Ch. 156, L. 1957; amd. Sec. 49, Ch. 121, L. 1974; Sec. 10-703, R.C.M. 1947; R.C.M. 1947, 10-703(part), 10-704; Sec. 53-4-405, MCA 1989; redes. 52-2-405 by Code Commissioner, 1991.

52-2-406. En. Sec. 5, Ch. 179, L. 1949; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 10-705; amd. Sec. 6, Ch. 38, L. 1979; Sec. 53-4-406, MCA 1989; redes. 52-2-406 by Code Commissioner, 1991.

52-2-407. En. Sec. 6, Ch. 179, L. 1949; amd. Sec. 1, Ch. 495, L. 1975; R.C.M. 1947, 10-706; Sec. 53-4-407, MCA 1989; redes. 52-2-407 by Code Commissioner, 1991.

Part 5

Subsidized Adoption (Renumbered. Sec. 174, Ch. 480, L. 1997)

Part Compiler's Comments

Sections Renumbered:

52-2-501. Renumbered 42-10-101. Sec. 174, Ch. 480, L. 1997.

52-2-502. Renumbered 42-10-102. Sec. 174, Ch. 480, L. 1997.

52-2-503. Renumbered 42-10-103. Sec. 174, Ch. 480, L. 1997.

52-2-504. Renumbered 42-10-104. Sec. 174, Ch. 480, L. 1997.

52-2-505. Renumbered 42-10-105. Sec. 174, Ch. 480, L. 1997.

52-2-506. Renumbered 42-10-106. Sec. 174, Ch. 480, L. 1997.

52-2-507. Renumbered 42-10-107. Sec. 174, Ch. 480, L. 1997.

52-2-508. Renumbered 42-10-108. Sec. 174, Ch. 480, L. 1997.

52-2-509. Renumbered 42-10-109. Sec. 174, Ch. 480, L. 1997.

52-2-510. Renumbered 42-10-110. Sec. 174, Ch. 480, L. 1997.

52-2-511 through 52-2-520 reserved.

52-2-521. Renumbered 42-10-121. Sec. 174, Ch. 480, L. 1997.

52-2-522. Renumbered 42-10-122. Sec. 174, Ch. 480, L. 1997.

52-2-523. Renumbered 42-10-123. Sec. 174, Ch. 480, L. 1997.

52-2-524. Renumbered 42-10-124. Sec. 174, Ch. 480, L. 1997.

52-2-525. Renumbered 42-10-125. Sec. 174, Ch. 480, L. 1997.

52-2-526. Renumbered 42-10-126. Sec. 174, Ch. 480, L. 1997.

52-2-527. Renumbered 42-10-127. Sec. 174, Ch. 480, L. 1997.

52-2-528. Renumbered 42-10-128. Sec. 174, Ch. 480, L. 1997.

Part 6 reserved

Part 7

Child Care

Part Cross-References

Authorization to levy tax and establish fund for establishment and maintenance of day-care facilities, 7-16-4114.

Preschool pupil immunization requirements, Title 20, ch. 5, part 4.

52-2-701. Short title. This part may be cited as the "Montana Child Care Act".

History: **En. Sec. 1, Ch. 692, L. 1989.**

52-2-702. Purpose — findings. (1) The purpose of this part is to assure that children requiring day care be provided such food, shelter, security and safety, guidance and direction, nurture and comfort, and learning experiences commensurate to their ages and capabilities so as to safeguard the growth and development of such children, thereby facilitating their proper physical and emotional maturation.

(2) (a) The legislature finds that the number of children living in homes where both parents work or in homes with a single parent who works has increased dramatically over the last decade.

(b) The legislature finds that the availability of quality child care is critical to the self-sufficiency and independence of Montana families, including the growing number of mothers who have young children and who work out of economic necessity.

(c) The legislature further finds that the number of quality child-care arrangements falls far short of the number required for children in need of child-care services.

(d) It is the intent of the legislature that the state promote day care for the purposes of:

(i) improving the quality of, and coordination among, child-care programs and providing additional resources for child-care services;

(ii) promoting the availability and diversity of quality child-care services for all children and families that need such services;

(iii) providing assistance to families whose financial resources are not sufficient to enable them to pay the full costs of necessary child-care services;

(iv) ensuring that parents are not forced by lack of available programs or financial resources to place a child in an unsafe or unhealthy child-care facility; and

(v) assisting people in finding and maintaining employment by lessening the stress related to the lack of adequate child care.

History: (1)En. Sec. 1, Ch. 606, L. 1981; amd. Sec. 92, Ch. 609, L. 1987; amd. Sec. 8, Ch. 692, L. 1989; Sec. 53-4-501(1), MCA 1987; redes. 52-2-702(1) by Code Commissioner, 1989; (2)En. Sec. 2, Ch. 692, L. 1989.

52-2-703. Definitions. In this part, the following definitions apply:

(1) "Child" means a person under 13 years of age or a person with special needs, as defined by the department, who is under 18 years of age or is 18 years of age and a full-time student expected to complete an educational program by 19 years of age.

(2) "Day care" or "child care" means care for children provided by an adult, other than a parent of the children or other person living with the children as a parent, on a regular basis for daily periods of less than 24 hours, whether that care is for daytime or nighttime hours.

(3) "Day-care center" means an out-of-home place in which day care is provided to 13 or more children on a regular basis.

(4) "Day-care facility" means a person, association, or place, incorporated or unincorporated, that provides day care on a regular basis or a place licensed or registered to provide day care on an irregular basis for children suffering from illness. It includes a family day-care home, a day-care center, a group day-care home, or a facility providing care in a child's home for the purpose of meeting registration requirements for the receipt of payments as provided in 52-2-713. The term does not include:

(a) a person who limits care to children who are related to the person by blood or marriage or under the person's legal guardianship, unless registration or licensure as a day-care facility is required to receive payments as provided in 52-2-713; or

(b) any group facility established chiefly for educational purposes that limits its services to children who are 3 years of age or older.

(5) "Department" means the department of public health and human services provided for in 2-15-2201.

(6) "Family day-care home" means a private residence in which day care is provided to three to six children on a regular basis.

(7) "Group day-care home" means a private residence or other structure in which day care is provided to 7 to 12 children on a regular basis.

(8) "License" means a written document issued by the department that the license holder has complied with this part and the applicable standards and rules for day-care centers.

(9) "Licensee" means the holder of a license issued by the department in accordance with the provisions of this part.

(10) "Professional training" means training for early childhood or school-age care providers that is recognized as professional development by a national education or certification organization or by a higher education institution.

(11) "Registrant" means the holder of a registration certificate issued by the department in accordance with the provisions of this part.

(12) "Registration" means the process whereby the department maintains a record of all family day-care homes and group day-care homes, prescribes standards, promulgates rules, and requires the operator of a family day-care home or a group day-care home to certify compliance with the prescribed standards and promulgated rules.

(13) "Registration certificate" means a written instrument issued by the department to publicly document that the certificate holder has, in writing, certified to the department compliance with this part and the applicable standards for family day-care homes and group day-care homes.

(14) "Regular basis" means providing day care to children of separate families for any daily periods of less than 24 hours and within 3 or more consecutive weeks.

(15) (a) "Related by blood or marriage" means the status of a child who is the son, daughter, brother, sister, first cousin, nephew, niece, or grandchild of a person providing child care.

(b) The term includes the status of a child described in subsection (15)(a) in a step or adoptive relationship.

(16) "School age" means a person who is at least 5 years of age and who is younger than 13 years of age or a person with special needs, as defined by the department, who is under 18 years of age or is 18 years of age and a full-time student expected to complete an educational program by 19 years of age.

(17) "School-age care" means an adult-supervised program that is provided for school-age children during nonschool hours.

History: En. Sec. 1, Ch. 247, L. 1965; amd. Sec. 2, Ch. 121, L. 1974; R.C.M. 1947, 10-801; amd. Sec. 7, Ch. 38, L. 1979; amd. Sec. 2, Ch. 606, L. 1981; amd. Sec. 92, Ch. 609, L. 1987; amd. Sec. 8, Ch. 692, L. 1989; Sec. 53-4-501(2), MCA 1987; redes. 52-2-703 by Code Commissioner, 1989; amd. Sec. 1, Ch. 404, L. 1991; amd. Sec. 1, Ch. 304, L. 1993; amd. Sec. 348, Ch. 546, L. 1995; amd. Sec. 1, Ch. 318, L. 1997.

52-2-704. Duties of department. (1) The department is responsible for planning, implementing, and coordinating programs under the Montana Child Care Act.

(2) The department shall:

(a) assess child-care needs and resources within the state;

(b) develop a state child-care plan;

(c) coordinate child-care programs administered by all state agencies;

(d) issue licenses to persons to receive children into a day-care center on a regular basis;

(e) prescribe the conditions and publish minimum standards upon which licenses and registration certificates are issued;

(f) adopt rules for day-care facilities consistent with the purposes of this part; and

(g) issue registration certificates to a person or persons to receive children into a family day-care home or group day-care home on a regular basis.

(3) The department may:

(a) enter into interagency agreements to administer and coordinate child-care programs;

(b) accept any federal funds made available for the improvement or promotion of child-care services within the state;

(c) administer any state and federal funds that may be appropriated for the purposes of the part.

History: (1), (2)(a) thru (2)(c), (3)En. Sec. 3, Ch. 692, L. 1989; (2)(d) thru (2)(g)En. Sec. 6, Ch. 247, L. 1965; amd. Sec. 6, Ch. 121, L. 1974; amd. Sec. 1, Ch. 293, L. 1977; R.C.M. 1947, 10-806(part); amd. Sec. 4, Ch. 606, L. 1981; Sec. 53-4-503, MCA 1987; redes. 52-2-702(2)(d) thru (2)(g) by Code Commissioner, 1989; amd. Sec. 4, Ch. 91, L. 1993; amd. Sec. 149, Ch. 418, L. 1995; amd. Sec. 349, Ch. 546, L. 1995; amd. Sec. 12, Ch. 171, L. 1997.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

52-2-705. Repealed. Sec. 16, Ch. 171, L. 1997.

History: En. Sec. 4, Ch. 692, L. 1989.

52-2-706 through 52-2-710 reserved.

52-2-711. Resource and referral and day-care improvement grant program. (1) (a) There is a grant program established within the department for the allocation of grant money to local child-care resource and referral programs and for improving the availability of quality child care and school-age day care.

(b) Program funds may include money from the following sources:

(i) funds specifically appropriated by the legislature for use under this section;

(ii) private gifts, grants, and donations;

(iii) federal or foundation grants awarded to the state for the purposes of this section; and

(iv) any other money made available for the purposes of this section.

(2) (a) The department may award grants to private, nonprofit organizations and public organizations that demonstrate the ability to provide child-care resource and referral services.

(b) To be eligible for a grant from the department as a resource and referral agency for a local area, an organization:

(i) shall maintain a database of child-care services in the community, including day-care facilities and preschools, which the organization continually updates;

(ii) shall include on the staff of the organization at least one individual who has expertise in child development;

(iii) must have the capability to provide resource and referral services in the local area;

(iv) must be able to respond to requests for information or assistance in a timely fashion;

(v) must be committed to providing services to all segments of the general public;

(vi) must be able to provide parents with a checklist to identify quality child-care services;

(vii) must be able to provide information on the availability of child-care subsidies;

(viii) shall maintain and make available to the public the number of all referrals made by the resource and referral agency; and

(ix) shall otherwise satisfy regulations promulgated by the department pursuant to this part.

(3) (a) The department may award grants for improving the availability of quality child care and school-age day care and for consumer education.

(b) The following grant applications must be given priority:

(i) grant applications for professional training for day-care or school-age care providers;

(ii) grant applications for the startup of school-age care programs or facilities when a community need has been demonstrated;

(iii) grant applications for consumer education; and

(iv) grant applications for preservation or expansion of existing care programs that fill a demonstrated need.

(4) The department shall adopt rules to administer the provisions of this section.

History: En. Sec. 5, Ch. 692, L. 1989; amd. Sec. 2, Ch. 318, L. 1997.

52-2-712. Repealed. Sec. 1, Ch. 618, L. 1991.

History: En. Sec. 6, Ch. 692, L. 1989.

52-2-713. Payments for eligible children. The department shall pay a daily rate established by the department and appropriated by the legislature to a day-care facility licensed or registered by the department for each child receiving day-care service and certified eligible by the department to receive day-care services.

History: En. 10-812 by Sec. 1, Ch. 167, L. 1975; R.C.M. 1947, 10-812; amd. Sec. 1, Ch. 662, L. 1979; amd. Sec. 15, Ch. 606, L. 1981; Sec. 53-4-514, MCA 1987; redes. 52-2-713 by Code Commissioner, 1989.

52-2-714 through 52-2-720 reserved.

52-2-721. License required — registration required — term of license or registration certificate — no fee charged. (1) A person, group of persons, or corporation may not:

(a) establish or maintain a day-care center for children unless licensed to do so by the department;

(b) operate a family day-care home or group day-care home without first procuring a family day-care or group day-care registration certificate from the department.

(2) The license and registration certificate must contain the ages and numbers of children for whom day care may be provided.

(3) The applicant's own children must be included in the manner provided for in department regulations in the total number of children to be cared for under the license or registration certificate.

(4) The department:

(a) may issue a license or registration certificate that remains in effect for a period not to exceed 3 years; and

(b) may not charge a fee to issue a license or registration certificate.

(5) A 3-year license may be issued only to a provider who has not received notice of any deficiencies on the licensing criteria and implementing guidelines that are provided in department rule.

History: En. Sec. 2, Ch. 247, L. 1965; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 10-802; amd. Sec. 3, Ch. 606, L. 1981; amd. Sec. 9, Ch. 692, L. 1989; Sec. 53-4-502, MCA 1987; redes. 52-2-721 by Code Commissioner, 1989; amd. Sec. 1, Ch. 135, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 135 in (4) deleted first sentence that read: "Licenses or registration certificates shall be issued for periods not to exceed 1 year"; inserted (4)(a) allowing issuance of licenses for up to 3 years; inserted (5) limiting 3-year licenses to providers without deficiencies; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

One-step licensing — inspection by other Department, Title 50, ch. 8.

52-2-722. Application for a license or registration certificate. (1) Application for a license or registration certificate shall be made to the department in the county in which the applicant lives on forms prescribed by the department.

(2) Applications for a license or registration certificate by Indians residing on Indian reservations shall be made through the tribal governing body on forms prescribed by the department. Applications made through a tribal governing body shall be accompanied by a request by the tribal governing body that the department investigate to determine whether a license or registration certificate should be granted.

(3) Within 30 days of receipt of the application, the department shall determine whether a license or registration certificate should be issued.

History: En. Sec. 6, Ch. 247, L. 1965; amd. Sec. 6, Ch. 121, L. 1974; amd. Sec. 1, Ch. 293, L. 1977; R.C.M. 1947, 10-806(part); amd. Sec. 8, Ch. 606, L. 1981; amd. Sec. 10, Ch. 692, L. 1989; Sec. 53-4-507, MCA 1987; redes. 52-2-722 by Code Commissioner, 1989.

Cross-References

Jurisdiction on Indian lands, Title 2, ch. 1, part 3.

52-2-723. Requirements for licensure. (1) The department shall include in the minimum standards for day-care centers the following requirements:

(a) The applicant, his employees, and all those persons who will come in direct contact with the children are of good character.

(b) The staff of the day-care facility is sufficient in number as provided by rule to provide adequate supervision and care of the children in the facility.

(c) Essential programs and practices carried on by the facility staff are developed and carried out with due regard for the protection of the health, safety, development, and well-being of the children.

(d) Applicant and staff are qualified by practical experience or education or training to give good care and treatment to the children.

(e) Intake records are kept on each child admitted for care.

(f) The applicant and staff limit admissions to the maximum number indicated on the current license.

(g) The applicant will arrange for the necessary precautions to guard against communicable diseases.

(h) Public liability insurance and fire insurance are currently in force for the protection of the operator, his staff, and the facility.

(i) Specify the ages and numbers of children that may be cared for in a day care facility.

(2) It is the duty of the department or its authorized representative to assist applicants in meeting the minimum requirements.

History: (1)En. Sec. 6, Ch. 247, L. 1965; amd. Sec. 6, Ch. 121, L. 1974; amd. Sec. 1, Ch. 293, L. 1977; Sec. 10-806, R.C.M. 1947; (2)En. Sec. 9, Ch. 247, L. 1965; amd. Sec. 49, Ch. 121, L. 1974; Sec. 10-809, R.C.M. 1947; R.C.M. 1947, 10-806(part), 10-809(part); amd. Sec. 9, Ch. 606, L. 1981; Sec. 53-4-508, MCA 1987; redes. 52-2-723 by Code Commissioner, 1989.

Cross-References

Casualty insurance, Title 33, ch. 23.

Property insurance, Title 33, ch. 24.

Duty to report cases of communicable disease, 37-2-301.

52-2-724. Provisional license — provisional registration certificate. (1) The department may issue a provisional license or provisional registration certificate for a period which may not exceed 6 months if it finds that a day-care facility or applicant does not meet all standards established by the department, as long as the facility or applicant is attempting to meet the minimum standards.

(2) The department may not waive the requirement that a day-care center be certified under the provisions of 52-2-734 and 52-2-735.

(3) The department may not waive the requirement that a day-care facility have current and adequate public liability insurance and fire insurance.

History: En. Sec. 7, Ch. 247, L. 1965; amd. Sec. 7, Ch. 121, L. 1974; R.C.M. 1947, 10-807; amd. Sec. 9, Ch. 38, L. 1979; amd. Sec. 10, Ch. 606, L. 1981; Sec. 53-4-509, MCA 1987; redes. 52-2-724 by Code Commissioner, 1989.

52-2-725. Renewal license — registration certificate. If a licensed or registered day-care facility desires to renew a license or registration certificate, the request for renewal shall be made in writing, on forms prescribed by the department, in the county in which the applicant lives, 30 days prior to the expiration of its license or registration certificate.

History: En. Sec. 8, Ch. 247, L. 1965; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 10-808; amd. Sec. 11, Ch. 606, L. 1981; Sec. 53-4-510, MCA 1987; redes. 52-2-725 by Code Commissioner, 1989.

52-2-726. Denial, cancellation, reduction, revocation, and nonrenewal of licenses and registration certificates — fair hearing. (1) The department, after written notice to the applicant, licensee, or registrant, may deny, suspend, cancel, reduce, modify, or revoke a license or registration certificate upon finding that:

(a) any of the applicable conditions set forth in this part as prerequisites for the issuance of a license or registration certificate no longer exist;

(b) the licensee or registrant is no longer in compliance with the minimum standards prescribed by the department; or

(c) the license or registration certificate was issued upon fraudulent or untrue representation.

(2) The applicant, licensee, or registrant by written request may invoke the opportunity for hearing on the department's action by requesting a hearing within 10 days of notice of department action. The hearing shall be conducted according to the department's rules.

History: En. Sec. 10, Ch. 247, L. 1965; amd. Sec. 8, Ch. 121, L. 1974; R.C.M. 1947, 10-810; amd. Sec. 14, Ch. 606, L. 1981; Sec. 53-4-513, MCA 1987; redes. 52-2-726 by Code Commissioner, 1989.

Cross-References

Contested case defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Contested cases, Title 2, ch. 4, part 6.

Fraud, 28-2-404 through 28-2-406.

Unsworn falsification to authorities, 45-7-203.

52-2-727 through 52-2-730 reserved.

52-2-731. Standards for day care. In developing standards, the department shall seek the advice and assistance of the superintendent of public instruction, representatives of day-care facilities, specialists in child care, and representatives of parent groups who use the services of day-care facilities. The standards may pertain to:

(1) character, suitability, and qualifications of an applicant and other persons directly responsible for the care of children;

(2) the number of individuals or staff required for adequate supervision and care of children in day-care facilities;

(3) child-care programs and practices necessary to ensure the health, safety, safety in transportation, development, and well-being of children;

(4) adequate and appropriate admission policies;

(5) adequacy of physical facilities and equipment;

(6) general financial ability and competence of an applicant to provide necessary care for children and maintain prescribed standards;

(7) the ages and numbers of children that may be cared for in a day-care facility.

History: En. Sec. 3, Ch. 247, L. 1965; amd. Sec. 3, Ch. 121, L. 1974; R.C.M. 1947, 10-803; amd. Sec. 5, Ch. 606, L. 1981; Sec. 53-4-504, MCA 1987; redes. 52-2-731 by Code Commissioner, 1989; amd. Sec. 150, Ch. 418, L. 1995; amd. Sec. 350, Ch. 546, L. 1995.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

52-2-732. Licensees or registrants to maintain records, furnish reports, and permit inspections. It shall be the duty of every applicant for a license or for registration and every licensee or registrant to give the right of entrance to and inspection of premises to representatives of the department at reasonable times, to keep and maintain such records as the department may prescribe, to permit inspection of these records, and to report to the department such facts as may be required on forms furnished by the department.

History: En. Sec. 9, Ch. 247, L. 1965; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 10-809(part); amd. Sec. 13, Ch. 606, L. 1981; Sec. 53-4-512, MCA 1987; redes. 52-2-732 by Code Commissioner, 1989.

52-2-733. Periodic visits to facilities by department — investigations — consultation with licensees and registrants. (1) The department or its authorized representative shall make periodic visits to all licensed day-care centers to ensure that minimum standards are maintained.

(2) The department may investigate and inspect the conditions and qualifications of any day-care center, group day-care home, or family day-care home seeking or holding a license or registration certificate under the provisions of this part.

(3) The department shall visit and inspect at least 20% of all registered family day-care homes and group day-care homes in each of the governor's planning regions annually.

(4) The department shall make annual unannounced visits to day-care centers.

(5) Upon request of the department, the state fire prevention and investigation program of the department of justice shall inspect any day-care facility for which a license or registration certificate is applied for or issued and shall report its findings to the department.

(6) Upon request, the department shall give consultation to every licensee and registrant who desires to upgrade the services of the licensee's or registrant's program.

(7) This section may not be construed to require the department to conduct an inspection of each day-care facility applying for a registration certificate under the provisions of this part.

History: En. Sec. 9, Ch. 247, L. 1965; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 10-809(part); amd. Sec. 12, Ch. 606, L. 1981; amd. Sec. 11, Ch. 692, L. 1989; Sec. 53-4-511, MCA 1987; redes. 52-2-733 by Code Commissioner, 1989; amd. Sec. 34, Ch. 706, L. 1991; amd. Sec. 151, Ch. 418, L. 1995; amd. Sec. 351, Ch. 546, L. 1995.

Cross-References

Department of Public Health and Human Services — sanitary inspections, 50-1-203.

State fire prevention and investigation program, Title 50, ch. 3, part 1.

52-2-734. Fire safety — certification required. (1) The state fire prevention and investigation program of the department of justice shall adopt and enforce rules for the protection of children in day-care centers from fire hazards and arrange for such inspections and investigations as it considers necessary.

(2) Before a license can be issued to operate a day-care center, each applicant shall submit to the department a certificate of approval from the state fire prevention and investigation program of the department of justice indicating that fire safety rules have been met.

History: En. Sec. 4, Ch. 247, L. 1965; amd. Sec. 4, Ch. 121, L. 1974; R.C.M. 1947, 10-804; amd. Sec. 8, Ch. 38, L. 1979; amd. Sec. 6, Ch. 606, L. 1981; amd. Sec. 11, Ch. 503, L. 1985; Sec. 53-4-505, MCA 1987; redes. 52-2-734 by Code Commissioner, 1989; amd. Sec. 35, Ch. 706, L. 1991.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

State fire prevention and investigation program — Advisory Council, 2-15-2005.

State fire prevention and investigation program, Title 50, ch. 3, part 1.

52-2-735. Health protection — certification required. (1) The department shall adopt rules for the protection of children in day-care centers from the health hazards of inadequate food preparation, poor nutrition, and communicable diseases. Rules adopted by the department must include rules requiring children under 5 years of age to be immunized against Haemophilus influenza type "b" before being admitted for care in the facility unless an exemption has been claimed as provided in 20-5-405.

(2) Local public health authorities shall arrange to provide training to day-care center providers and employees regarding health hazards. Upon successful completion of the training the local public health authorities shall issue certificates to the providers and employees.

(3) In lieu of training, local public health authorities may elect to inspect facilities and issue certificates of approval to child-care center providers.

(4) Each applicant for a license to operate a day-care center shall submit to the department a certificate issued pursuant to subsection (2) or (3) before the department will issue a license.

(5) The local public health authority may charge the applicant a reasonable fee, not to exceed $25, for any inspection necessary to issue a

certificate of approval, or a fee not to exceed the documented cost for training it provides under this section.

History: En. Sec. 5, Ch. 247, L. 1965; amd. Sec. 5, Ch. 121, L. 1974; R.C.M. 1947, 10-805; amd. Sec. 7, Ch. 606, L. 1981; Sec. 53-4-506, MCA 1987; redes. 52-2-735 by Code Commissioner, 1989; amd. Sec. 3, Ch. 165, L. 1991; amd. Sec. 152, Ch. 418, L. 1995; amd. Sec. 352, Ch. 546, L. 1995.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

52-2-736 through 52-2-740 reserved.

52-2-741. Penalty — remedies. (1) A person, group of persons, or corporation who establishes or maintains a day-care facility or assists in conducting or maintaining a day-care facility without first obtaining a license or registration certificate from the department as provided for in this part is guilty of a misdemeanor and upon conviction is punishable by a fine not to exceed $500.

(2) (a) If the department is advised or has reason to believe that a person, group of persons, or corporation is operating a day-care facility without a license or registration certificate, it shall make an investigation to ascertain the facts. If the department finds that the day-care facility is being or has been operated without a license or registration certificate, it may report the results of its investigation to the attorney general or the county attorney of the county where the day-care facility is being operated for prosecution and request that an injunction be issued against the facility until a license or certificate is issued.

(b) The department may institute any action necessary to enforce compliance with this part or any order or rule of the department under this part or to obtain a judicial interpretation of any of the foregoing.

(c) The department may, by its own attorney, any county attorney, or the attorney general, initiate an action in the justice's court, city court, municipal court, or district court of the appropriate jurisdiction and be represented by that representative on appeal to the district court and supreme court of Montana, as applicable.

History: (1)En. Sec. 18, Ch. 606, L. 1981; (2)En. Sec. 11, Ch. 247, L. 1965; amd. Sec. 9, Ch. 121, L. 1974; R.C.M. 1947, 10-811; amd. Sec. 16, Ch. 606, L. 1981; amd. Sec. 12, Ch. 692, L. 1989; Sec. 53-4-515, MCA 1987; redes. 52-2-741 by Code Commissioner, 1989; amd. Sec. 1, Ch. 222, L. 1997.

Cross-References

Injunctions, Title 27, ch. 19.

CHAPTER 3

ADULT SERVICES

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Chapter Cross-References

Mature Defensive Driving Act, 33-16-221 through 33-16-225.

Part 1
Problems of Aging

Part Cross-References

Office of Aging — Advisory Council on Aging, 2-15-2206.

Accessibility of polling places, Title 13, ch. 3, part 2.

52-3-101. *(Temporary)* **Functions of department of public health and human services.** The department of public health and human services shall:

(1) consult with and advise organized efforts by communities, organizations, associations, and groups that are working toward any forms of assistance to problems of aging;

(2) study and identify problems of aging;

(3) review existing programs for the aging and make recommendations to the governor and the legislature for improvements in the programs;

(4) encourage the sponsorship of community projects that will seek to make optimum use of the time and talents of retired persons;

(5) coordinate, through area agencies on aging and county councils, the delivery of community-based care, including but not limited to home health care, homemaker services, foster home care, nutrition, transportation, winterization, information and referral, and recreation;

(6) (a) produce a biennial report, with annual updates, on statewide and community issues related to aging. The report must be provided to the legislature or an appropriate interim committee and the governor and must include but is not limited to:

(i) identifying key stakeholders in state and community planning for aging, such as senior citizens and those who will become senior citizens in the next decade, local government officials, members of the business community, schools, service providers, and state agencies;

(ii) reporting current demographics and projected demographics for Montana's aging population;

(iii) presenting the implications of the aging population for local and state services and budgets and state law and policies; and

(iv) providing a statewide overview of the 4-year plans of area agencies on aging to identify issues, needs, and resources.

(b) The report provided for in subsection (6)(a) must be posted in an appropriate electronic forum and format for access by the public. *(Terminates June 30, 2001—sec. 5, Ch. 435, L. 1999.)*

52-3-101. *(Effective July 1, 2001)* **Functions of department of public health and human services.** The department of public health and human services shall:

(1) consult with and advise organized efforts by communities, organizations, associations, and groups that are working toward any forms of assistance to problems of aging;

(2) study and identify problems of aging;

(3) review existing programs for the aging and make recommendations to the governor and the legislature for improvements in the programs;

(4) encourage the sponsorship of community projects which will seek to make optimum use of the time and talents of retired persons;

(5) coordinate, through area councils on aging, the delivery of community-based care, including but not limited to home health care, homemaker services, foster home care, nutrition, transportation, winterization, information and referral, and recreation.

History: **En. Sec. 4, Ch. 73, L. 1965; amd. Sec. 4, Ch. 12, L. 1967; Sec. 82-3504, R.C.M. 1947; amd. and redes. 71-2001 by Sec. 43, Ch. 121, L. 1974; R.C.M. 1947, 71-2301; amd. Sec. 1, Ch. 665, L. 1979; amd. Sec. 11, Ch. 609, L. 1987; Sec. 53-5-101, MCA 1989; redes. 52-3-101 by Code Commissioner, 1991; amd. Sec. 353, Ch. 546, L. 1995; amd. Sec. 1, Ch. 435, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 435 in (5) substituted "area agencies on aging and county councils" for "area councils on aging"; inserted (6) concerning biennial report and providing for content of report; and made minor changes in style. Amendment effective October 1, 1999, and terminates June 30, 2001.

Cross-References

Adult protective service teams, 52-3-805.

Community-based long-term care facilities — powers and duties of Department, 53-6-402.

52-3-102. Grants and gifts to department. The department of public health and human services may receive on behalf of the state any grant from the federal government or any grant or gift from any source and accept the grant or gift so that the title will pass to the state. All grants, grants-in-aid, or gifts must be deposited with the state treasurer and must be continuously available to the department.

History: **En. Sec. 5, Ch. 73, L. 1965; amd. Sec. 5, Ch. 12, L. 1967; Sec. 82-3505, R.C.M. 1947; amd. and redes. 71-2002 by Sec. 44, Ch. 121, L. 1974; R.C.M. 1947, 71-2302; amd. Sec. 11, Ch. 609, L. 1987; Sec. 53-5-102, MCA 1989; redes. 52-3-102 by Code Commissioner, 1991; amd. Sec. 354, Ch. 546, L. 1995.**

52-3-103. *(Temporary)* **Designation of area agencies.** (1) The department of public health and human services may designate as an area agency in a geographical area an entity that demonstrates its ability to:

(a) develop and administer an area plan for a comprehensive and coordinated system of services;

(b) serve as the advocate and focal point for older persons in the planning and service area; and

(c) identify the stakeholders in the planning and service areas and to involve them in long-term identification of needs and goals.

(2) An entity may be but is not limited to:

(a) an established office on aging that operates within the geographical area;

(b) an office or agency of a unit of general purpose local government, except a county welfare office or department;

(c) any combination of offices or units of general purpose local governments; or

(d) any other public or private, nonprofit agency, except a regional or local agency of the state. *(Terminates June 30, 2001—sec. 5, Ch. 435, L. 1999.)*

52-3-103. *(Effective July 1, 2001)* **Designation of area agencies.** (1) The department of public health and human services may designate as an area agency in a geographical area an entity that demonstrates its ability to:

(a) develop and administer an area plan for a comprehensive and coordinated system of services; and

(b) serve as the advocate and focal point for older persons in the planning and service area.

(2) An entity may be but is not limited to:

(a) an established office on aging that operates within the geographical area;

(b) an office or agency of a unit of general purpose local government, except a county welfare office or department;

(c) any combination of offices or units of general purpose local governments; or

(d) any other public or private, nonprofit agency, except a regional or local agency of the state.

History: En. Sec. 1, Ch. 337, L. 1983; amd. Sec. 11, Ch. 609, L. 1987; Sec. 53-5-103, MCA 1989; redes. 52-3-103 by Code Commissioner, 1991; amd. Sec. 355, Ch. 546, L. 1995; amd. Sec. 2, Ch. 435, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 435 inserted (1)(c) concerning involving stakeholders in identifying needs and goals; and made minor changes in style. Amendment effective October 1, 1999, and terminates June 30, 2001.

Cross-References

Older Americans Act planning and service areas — state plan on aging, Title 52, ch. 3, part 4.

52-3-104 through 52-3-110 reserved.

52-3-111. Senior citizens' legislature. (1) The department of public health and human services may contract with a senior citizens' organization for the purpose of establishing a mock legislature to be held in the year preceding the legislative session.

(2) The contract entered into with the senior citizens' organization must provide that the organization match on a one-to-two, organization to department, ratio any amount contracted for.

(3) The department of public health and human services shall cooperate with the department of administration in assisting the senior citizens' organization designated to establish the mock legislature.

History: En. Secs. 1, 2, Ch. 638, L. 1983; amd. Sec. 11, Ch. 609, L. 1987; Sec. 53-5-111, MCA 1989; redes. 52-3-111 by Code Commissioner, 1991; amd. Sec. 356, Ch. 546, L. 1995.

Part 2

Protective Services

52-3-201. Short title. This part may be cited as the "Protective Services Act for Aged Persons or Disabled Adults".

History: En. 71-1914 by Sec. 1, Ch. 232, L. 1975; R.C.M. 1947, 71-1914; Sec. 53-5-201, MCA 1989; redes. 52-3-201 by Code Commissioner, 1991.

52-3-202. Definitions. As used in this part, the following definitions apply:

(1) "Aged person" means an aged person as defined by the department.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Disabled adult" means a person 18 years of age or older who is defined by the department as disabled or who is a person with developmental disabilities, as defined in 53-20-102.

(4) "Protective services" means assistance to an aged person or disabled adult in obtaining the services offered by the department.

History: En. 71-1915 by Sec. 2, Ch. 232, L. 1975; R.C.M. 1947, 71-1915; amd. Sec. 11, Ch. 609, L. 1987; Sec. 53-5-202, MCA 1989; redes. 52-3-202 by Code Commissioner, 1991; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 1, Ch. 465, L. 1995; amd. Sec. 357, Ch. 546, L. 1995.

52-3-203. Purpose. To ensure that aged persons or disabled adults in the state be afforded the opportunity to receive protective services and to implement certain provisions of the federal government's Title XX, Social Services Amendments of 1972, this legislature declares the department to be recognized as the public agency responsible for providing those services.

History: En. 71-1916 by Sec. 3, Ch. 232, L. 1975; R.C.M. 1947, 71-1916; Sec. 53-5-203, MCA 1989; redes. 52-3-203 by Code Commissioner, 1991.

52-3-204. Duties of department. The department shall be responsible for acting on requests for protective services from aged persons or disabled adults or from relatives, friends, or other reputable persons requesting those services on behalf of an aged person or disabled adult.

History: En. 71-1917 by Sec. 4, Ch. 232, L. 1975; R.C.M. 1947, 71-1917; Sec. 53-5-204, MCA 1989; redes. 52-3-204 by Code Commissioner, 1991.

52-3-205. Departmental authority. The department may implement a program for protective services by establishing appropriate rules which are not inconsistent with the department's activities.

History: En. 71-1918 by Sec. 5, Ch. 232, L. 1975; R.C.M. 1947, 71-1918; Sec. 53-5-205, MCA 1989; redes. 52-3-205 by Code Commissioner, 1991.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

52-3-206. Annual reports. The department shall make annual reports on the number of people served by this part and the type of protective services made available to the aged persons and disabled adults of Montana.

History: En. 71-1919 by Sec. 6, Ch. 232, L. 1975; R.C.M. 1947, 71-1919; Sec. 53-5-206, MCA 1989; redes. 52-3-206 by Code Commissioner, 1991.

52-3-207. Protective services not creating guardianship or conservatorship. (1) The provision of protective services does not create a guardianship or conservatorship relationship between the department and the aged person or disabled adult unless a guardianship or conservatorship is created in accordance with the requirements of Title 72, chapter 5, part 3 or 4.

(2) The department may not provide protective services that impose a legal limitation or restriction on an aged person or a disabled adult:

(a) except emergency protective services provided under 52-3-804; or

(b) unless the department has been appointed legal guardian or conservator for that person under the provisions of Title 72, chapter 5, part 3 or 4.

History: En. Sec. 7, Ch. 343, L. 1981; Sec. 53-5-207, MCA 1989; redes. 52-3-207 by Code Commissioner, 1991; amd. Sec. 2, Ch. 465, L. 1995.

Part 3

Adult Foster Family Care (Repealed. Sec. 15, Ch. 366, L. 1995)

Part Compiler's Comments

Histories of Repealed Sections:

52-3-301. En. 71-2303 by Sec. 1, Ch. 364, L. 1975; R.C.M. 1947, 71-2303; Sec. 53-5-301, MCA 1989; redes. 52-3-301 by Code Commissioner, 1991.

52-3-302. En. 71-2304 by Sec. 2, Ch. 364, L. 1975; amd. Sec. 40, Ch. 37, L. 1977; R.C.M. 1947, 71-2304; amd. Sec. 2, Ch. 665, L. 1979; amd. Sec. 11, Ch. 609, L. 1987; Sec. 53-5-302, MCA 1989; redes. 52-3-302 by Code Commissioner, 1991.

52-3-303. En. 71-2305 by Sec. 3, Ch. 364, L. 1975; R.C.M. 1947, 71-2305; amd. Sec. 10, Ch. 38, L. 1979; amd. Sec. 3, Ch. 665, L. 1979; amd. Sec. 5, Ch. 102, L. 1989; Sec. 53-5-303, MCA 1989; redes. 52-3-303 by Code Commissioner, 1991.

52-3-304. En. 71-2306 by Sec. 4, Ch. 364, L. 1975; R.C.M. 1947, 71-2306; amd. Sec. 11, Ch. 38, L. 1979; amd. Sec. 3, Ch. 199, L. 1979; Sec. 53-5-304, MCA 1989; redes. 52-3-304 by Code Commissioner, 1991; amd. Sec. 1, Ch. 706, L. 1991.

52-3-305. En. 71-2307 by Sec. 5, Ch. 364, L. 1975; R.C.M. 1947, 71-2307; Sec. 53-5-305, MCA 1989; redes. 52-3-305 by Code Commissioner, 1991; amd. Sec. 1, Ch. 421, L. 1993.

52-3-306 through 52-3-310 reserved.

52-3-311. En. Sec. 1, Ch. 102, L. 1989; Sec. 53-5-311, MCA 1989; redes. 52-3-311 by Code Commissioner, 1991.

52-3-312. En. Sec. 2, Ch. 102, L. 1989; Sec. 53-5-312, MCA 1989; redes. 52-3-312 by Code Commissioner, 1991.

52-3-313. En. Sec. 3, Ch. 102, L. 1989; Sec. 53-5-313, MCA 1989; redes. 52-3-313 by Code Commissioner, 1991.

52-3-314. En. Sec. 4, Ch. 102, L. 1989; Sec. 53-5-314, MCA 1989; redes. 52-3-314 by Code Commissioner, 1991.

Part 4

State Plan on Aging

Part Cross-References

Area agencies for aging services, 52-3-103.

52-3-401. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Older Americans Act" means the Older Americans Act of 1965, as amended, 42 U.S.C. 3001, et seq.

(3) "Planning and service area" means a geographic area of the state that is designated for purposes of planning, development, delivery, and overall administration of services under the Older Americans Act.

(4) "Services to the aged" means those services the department administers pursuant to the Older Americans Act.

(5) "State plan" means a plan developed by the department to coordinate and administer delivery of services under the Older Americans Act.

History: En. Sec. 1, Ch. 645, L. 1983; amd. Sec. 11, Ch. 609, L. 1987; Sec. 53-5-601, MCA 1989; redes. 52-3-401 by Code Commissioner, 1991; amd. Sec. 359, Ch. 546, L. 1995.

52-3-402. Purpose. The purpose of this part is to grant the department authority to develop and administer the state plan on aging, to coordinate services to the aged pursuant to the Older Americans Act, and to establish or redesignate planning and service areas pursuant to section 305 of that act. It is the intent of the legislature that the number of planning and service areas be limited so that unnecessary administrative costs are eliminated.

History: En. Sec. 2, Ch. 645, L. 1983; Sec. 53-5-602, MCA 1989; redes. 52-3-402 by Code Commissioner, 1991.

52-3-403. Existing planning and service areas grandfathered — exception. The 11 planning and service areas existing on April 27, 1983, are grandfathered in for a period of not less than 4 years. However, the department may accept and consider requests from such existing planning and service areas that the requesting area be divided into two new areas and may grant one request and divide the area into two new areas. If the department grants a request and divides the requesting area into two new areas, this section's grandfather clause applies to the two new areas.

History: En. Sec. 3, Ch. 645, L. 1983; Sec. 53-5-603, MCA 1989; redes. 52-3-403 by Code Commissioner, 1991.

52-3-404. State plan on aging. The department may administer and develop the state plan on aging.

History: En. Sec. 4, Ch. 645, L. 1983; Sec. 53-5-604, MCA 1989; redes. 52-3-404 by Code Commissioner, 1991.

52-3-405. Designation of planning and service areas. (1) On or before October 1, 1983, and every 4 years following, the department shall redesignate the planning and service areas it utilizes for services to the aged.

(2) The department shall fix the number of planning and service areas at no less than 7 and no more than 12.

(3) Planning and service areas shall follow either recognized county boundaries or Indian reservation boundaries, or both.

(4) The department may designate a combination of Indian reservations as a planning and service area for any reservations that have applied to be designated under a consortium supported by their respective tribal governments.

History: En. Sec. 5, Ch. 645, L. 1983; Sec. 53-5-605, MCA 1989; redes. 52-3-405 by Code Commissioner, 1991.

52-3-406. Departmental rules. The department shall adopt rules to administer and implement this part.

History: En. Sec. 6, Ch. 645, L. 1983; Sec. 53-5-606, MCA 1989; redes. 52-3-406 by Code Commissioner, 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 5

Montana Older Americans Act

Part Cross-References

Montana Access to Food and Nutrition Act, Title 50, ch. 49, part 1.

52-3-501. Short title. This part may be cited as the "Montana Older Americans Act".

History: En. Sec. 1, Ch. 67, L. 1987; Sec. 53-5-701, MCA 1989; redes. 52-3-501 by Code Commissioner, 1991.

52-3-502. Definitions. In this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Older Montanan" means a resident of this state who is at least 60 years of age.

History: En. Sec. 2, Ch. 67, L. 1987; amd. Sec. 64, Ch. 83, L. 1989; Sec. 53-5-702, MCA 1989; redes. 52-3-502 by Code Commissioner, 1991; amd. Sec. 360, Ch. 546, L. 1995.

52-3-503. *(Temporary)* **Purpose and policy.** (1) The legislature finds that older Montanans constitute a valuable resource of this state and that their competence, experience, and wisdom must be used more effectively for the benefit of all Montanans.

(2) The legislature further finds that a complete range of services is not available in all areas of the state and that many Montanans lack access to the services that are available.

(3) The legislature declares that it is the policy of this state, subject to available funding, to provide a wide range of coordinated services to enable older Montanans to maintain an independent lifestyle, avoid unnecessary institutional care, and live in dignity.

(4) It is the intent of the legislature that available federal, state, regional, and local resources be used to strengthen the economic, social, and general well-being of older Montanans and that the state:

(a) develop appropriate programs for older Montanans;

(b) coordinate and integrate all levels of service, with emphasis on the whole person; and

(c) promote alternative forms of service that will create options for older Montanans.

(5) It is the intent of the legislature that the state and its communities plan for the future by organizing more local involvement within communities and their surrounding rural areas. Communities need to identify all of the stakeholders that are integral to the success of meeting the challenges facing a society with an aging population. The state shall gather and coordinate the information received by the community planning efforts and bring that information forward to allow coordinated services that provide the options that Montanans need. *(Terminates June 30, 2001—sec. 5, Ch. 435, L. 1999.)*

52-3-503. *(Effective July 1, 2001)* **Purpose and policy.** (1) The legislature finds that older Montanans constitute a valuable resource of this state and that their competence, experience, and wisdom must be used more effectively for the benefit of all Montanans.

(2) The legislature further finds that a complete range of services is not available in all areas of the state and that many Montanans lack access to the services that are available.

(3) The legislature declares that it is the policy of this state, subject to available funding, to provide a wide range of coordinated services to enable older Montanans to maintain an independent lifestyle, avoid unnecessary institutional care, and live in dignity.

(4) It is the intent of the legislature that available federal, state, regional, and local resources be used to strengthen the economic, social, and general well-being of older Montanans and that the state:

(a) develop appropriate programs for older Montanans;

(b) coordinate and integrate all levels of service, with emphasis on the whole person; and

(c) promote alternative forms of service that will create options for older Montanans.

History: En. Sec. 3, Ch. 67, L. 1987; Sec. 53-5-703, MCA 1989; redes. 52-3-503 by Code Commissioner, 1991; amd. Sec. 3, Ch. 435, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 435 inserted (5) concerning legislative intent to have local involvement in planning. Amendment effective October 1, 1999, and terminates June 30, 2001.

52-3-504. *(Temporary)* **Services to be provided.** Subject to available funding, the department, in conjunction with other state, local, and private agencies and organizations, shall identify and may provide, in addition to existing services for older Montanans:

(1) a directory of available services;

(2) transportation that provides access to services;

(3) housing, nutrition, education, homemaker, escort, respite, hospice, and other programs that facilitate self-care;

(4) physical and mental health care, including inpatient and outpatient services, screening, appliances and supplies, and home health care;

(5) placement in adult day care, foster care, personal care, supervisory care, and nursing homes;

(6) protective advocacy and legal programs;

(7) job training, job development, and income maintenance;

(8) adult education;

(9) training and research in aging; and

(10) technical assistance to communities through the area agencies on aging to identify stakeholders to conduct long-term planning and identification of needs. *(Terminates June 30, 2001—sec. 5, Ch. 435, L. 1999.)*

52-3-504. *(Effective July 1, 2001)* **Services to be provided.** Subject to available funding, the department, in conjunction with other state, local, and private agencies and organizations, shall identify and may provide for older Montanans, in addition to existing services:

(1) a directory of available services;

(2) transportation that provides access to services;

(3) housing, nutrition, education, homemaker, escort, respite, hospice, and other programs that facilitate self-care;

(4) physical and mental health care, including inpatient and outpatient services, screening, appliances and supplies, and home health care;

(5) placement in adult day care, foster care, personal care, supervisory care, and nursing homes;

(6) protective advocacy and legal programs;

(7) job training, job development, and income maintenance;

(8) adult education; and

(9) training and research in aging.

History: En. Sec. 4, Ch. 67, L. 1987; Sec. 53-5-704, MCA 1989; redes. 52-3-504 by Code Commissioner, 1991; amd. Sec. 4, Ch. 435, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 435 inserted (10) concerning technical assistance to communities; and made minor changes in style. Amendment effective October 1, 1999, and terminates June 30, 2001.

52-3-505. Role of department. The department shall develop a plan to coordinate the services identified in 52-3-504, facilitate cooperation among agencies, avoid duplication, and increase efficiency.

History: En. Sec. 5, Ch. 67, L. 1987; Sec. 53-5-705, MCA 1989; redes. 52-3-505 by Code Commissioner, 1991.

52-3-506. Coordination with federal legislation. Nothing in this part shall be construed to prevent the department from complying with the rules and regulations promulgated by the U.S. department of health and human services pursuant to the "Older Americans Act of 1965", as amended.

History: En. Sec. 6, Ch. 67, L. 1987; Sec. 53-5-706, MCA 1989; redes. 52-3-506 by Code Commissioner, 1991.

Part 6

Ombudsman Services

52-3-601. Purpose. The legislature finds that many disabled and elderly Montana citizens reside in long-term care facilities in Montana and because of their isolated and vulnerable condition are dependent on others for care and protection. It is the intent of the legislature that, contingent on receipt of federal funds for the purpose, the office of legal and long-term care ombudsman services:

(1) monitor the quality of care and life for residents of long-term care facilities;

(2) develop and coordinate legal services for elderly citizens; and

(3) through necessary investigations, reports, and corrective action, ensure that a good quality of care and life be maintained for residents of long-term care facilities.

History: En. Sec. 1, Ch. 223, L. 1987; Sec. 53-5-801, MCA 1989; redes. 52-3-601 by Code Commissioner, 1991.

52-3-602. Definitions. In this part, the following definitions apply:

(1) "Local ombudsman" means a person officially designated by the long-term care ombudsman to act as his local representative.

(2) "Long-term care facility" means a facility or part thereof that provides skilled nursing care, intermediate nursing care, or personal care, as these terms are defined in 50-5-101.

(3) "Long-term care ombudsman" means the individual appointed under 42 U.S.C. 3027(a)(12) to fulfill the federal requirement that the state provide an advocate for residents of long-term care facilities.

History: En. Sec. 2, Ch. 223, L. 1987; Sec. 53-5-802, MCA 1989; redes. 52-3-602 by Code Commissioner, 1991.

52-3-603. Office of legal and long-term care ombudsman services. Contingent on receipt of federal funds for the purpose, there is an office of legal and long-term care ombudsman services in the department of public health and human services. As required by the Older Americans Act of 1965, as amended

(42 U.S.C. 3001, et seq.), and the regulations adopted pursuant thereto, the office:

(1) serves as an advocate for Montana citizens residing in long-term care facilities, regardless of their age or source of payment for care, to ensure that their rights are protected, that they receive quality care, and that they reside in a safe environment; and

(2) coordinates legal services for the elderly.

History: En. Sec. 3, Ch. 223, L. 1987; amd. Sec. 65, Ch. 83, L. 1989; Sec. 53-5-803, MCA 1989; redes. 52-3-603 by Code Commissioner, 1991; amd. Sec. 361, Ch. 546, L. 1995.

52-3-604. Access to long-term care facilities. (1) The long-term care ombudsman or local ombudsman shall have access without advance notice to any long-term care facility, including private access to any resident, for the purpose of meeting with residents, investigating and resolving complaints, and advising residents on their rights.

(2) Access must be granted to the long-term care ombudsman or local ombudsman during normal visiting hours (9 a.m. to 6 p.m.) and to the long-term care ombudsman at any time he considers necessary to perform the duties described in 52-3-603.

(3) The ombudsman shall carry out the duties described in 52-3-603 in a manner that is least disruptive to resident care and activities.

History: En. Sec. 4, Ch. 223, L. 1987; Sec. 53-5-804, MCA 1989; redes. 52-3-604 by Code Commissioner, 1991.

52-3-605. Enforcement of access. (1) A person who violates the provisions of 52-3-604 is subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation. The department of public health and human services or, upon request of that department, the county attorney of the county in which the long-term care facility in question is located may petition the district court to impose, assess, and recover the civil penalty. Money collected as a civil penalty must be deposited in the state general fund.

(2) The department of public health and human services or, upon request of that department, the county attorney of the county in which the long-term care facility in question is located may bring an action to enjoin a violation of any provision of 52-3-604 in addition to or exclusive of the remedy in subsection (1).

History: En. Sec. 5, Ch. 223, L. 1987; Sec. 53-5-805, MCA 1989; redes. 52-3-605 by Code Commissioner, 1991; amd. Sec. 153, Ch. 418, L. 1995; amd. Sec. 362, Ch. 546, L. 1995.

Part 7 reserved

Part 8

Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act

52-3-801. Short title. This part may be cited as the “Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act”.

History: En. Sec. 1, Ch. 623, L. 1983; amd. Sec. 1, Ch. 198, L. 1989; Sec. 53-5-501, MCA 1989; redes. 52-3-801 by Code Commissioner, 1991; amd. Sec. 21, Ch. 255, L. 1995.

52-3-802. Legislative findings and purpose. The legislature finds that a need exists to provide for cooperation among law enforcement officials and agencies, courts, and state and county agencies providing human services in preventing the abuse, sexual abuse, neglect, and exploitation of Montana's elderly persons and persons with developmental disabilities through the identification, reporting, and prosecution of acts of abuse, sexual abuse, neglect, and exploitation.

History: En. Sec. 2, Ch. 623, L. 1983; amd. Sec. 2, Ch. 198, L. 1989; Sec. 53-5-502, MCA 1989; redes. 52-3-802 by Code Commissioner, 1991; amd. Sec. 1, Ch. 167, L. 1993; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 1, Ch. 196, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 196 near end after "reporting" inserted "and prosecution"; and made minor changes in style. Amendment effective October 1, 1999.

52-3-803. Definitions. As used in this part, the following definitions apply:

(1) "Abuse" means:

(a) the infliction of physical or mental injury; or

(b) the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person or a person with a developmental disability without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Exploitation" means:

(a) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of the person's money, assets, or property;

(b) an act taken by a person who has the trust and confidence of an older person or a person with a developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, or benefit of the person's money, assets, or property.

(4) "Incapacitated person" has the meaning given in 72-5-101.

(5) "Long-term care facility" means a facility defined in 50-5-101.

(6) "Mental injury" means an identifiable and substantial impairment of a person's intellectual or psychological functioning or well-being.

(7) "Neglect" means the failure of a person who has assumed legal responsibility or a contractual obligation for caring for an older person or a person with a developmental disability or who has voluntarily assumed responsibility for the person's care, including an employee of a public or private residential institution, facility, home, or agency, to provide food, shelter,

clothing, or services necessary to maintain the physical or mental health of the older person or the person with a developmental disability.

(8) "Older person" means a person who is at least 60 years of age. For purposes of prosecution under 52-3-825(2), the person 60 years of age or older must be unable to provide personal protection from abuse, sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.

(9) "Person with a developmental disability" means a person 18 years of age or older who has a developmental disability, as defined in 53-20-102.

(10) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

(11) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

History: En. Sec. 3, Ch. 623, L. 1983; amd. Sec. 1, Ch. 668, L. 1985; amd. Sec. 111, Ch. 370, L. 1987; amd. Sec. 2, Ch. 450, L. 1987; amd. Sec. 3, Ch. 198, L. 1989; Sec. 53-5-503, MCA 1989; redes. 52-3-803 by Code Commissioner, 1991; amd. Sec. 1, Ch. 716, L. 1991; amd. Sec. 2, Ch. 167, L. 1993; amd. Sec. 1, Ch. 426, L. 1993; amd. Sec. 3, Ch. 465, L. 1995; amd. Sec. 2, Ch. 196, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 196 inserted definition of department; in definition of exploitation in (a) near beginning after "use of" inserted "an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to", after second "developmental disability" inserted language regarding obtaining control of or diverting ownership, use, benefit, or possession, after "person's money" inserted "assets", after "by means of" inserted "deception", and after "undue influence" inserted language concerning use of intimidation with intent or result to deprive older person or person with developmental disability of ownership, use, benefit, or possession of person's money, assets, or property and inserted (b) regarding acts taken by person who has trust and confidence of older person; in definition of neglect substituted "a person who has assumed legal responsibility or contractual obligation for caring for" for "a guardian; an employee of a public or private residential institution, facility, home, or agency; or any person legally responsible in a residential setting for the welfare of", after "developmental disability" inserted language concerning person who has voluntarily assumed responsibility for care, including employee of public or private institution, facility, home, or agency, and after "to provide" deleted "to the extent of legal responsibility"; and made minor changes in style. Amendment effective October 1, 1999.

52-3-804. Duties of department. (1) The department shall investigate reports of abuse, sexual abuse, neglect, or exploitation received pursuant to 52-3-811(1)(a).

(2) The department shall prepare an annual report of the information obtained pursuant to the reporting requirement of this part.

(3) The department shall, when appropriate, provide protective services under Title 52, chapter 3, part 2, for an older person or a person with a developmental disability alleged to have been abused, sexually abused, neglected, or exploited.

(4) If a person alleged to be abused, sexually abused, neglected, or exploited pursuant to this part or the person's caretaker refuses to allow a representative of the department entrance to the premises for the purpose of investigating a report made pursuant to 52-3-811(1)(a), the district court in the county where the person is found may order a law enforcement officer or a department social worker to enter the premises to conduct an investigation

upon finding that there is probable cause to believe that the person is abused, sexually abused, neglected, or exploited.

(5) If a representative of the department has reasonable grounds to believe that an older person or a person with a developmental disability alleged to be abused, sexually abused, neglected, or exploited is suffering from abuse, sexual abuse, neglect, or exploitation that presents a substantial risk of death or serious physical injury, the department may:

(a) provide voluntary protective services as provided in subsection (3); or

(b) if the department representative has reasonable grounds to believe that the person is incapacitated, provide emergency protective services as follows:

(i) arrange or facilitate an appropriate emergency protective service placement;

(ii) transport or arrange for the transport of the person to the appropriate placement;

(iii) not later than 2 judicial days following placement of the person, either:

(A) provide voluntary protective services as provided under subsection (3); or

(B) petition the district court to act as temporary guardian or appoint a temporary guardian as provided in 72-5-317.

History: En. Sec. 9, Ch. 623, L. 1983; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 4, Ch. 198, L. 1989; Sec. 53-5-504, MCA 1989; redes. 52-3-804 by Code Commissioner, 1991; amd. Sec. 2, Ch. 716, L. 1991; amd. Sec. 3, Ch. 167, L. 1993; amd. Sec. 4, Ch. 465, L. 1995; amd. Sec. 363, Ch. 546, L. 1995; amd. Sec. 3, Ch. 196, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 196 in (5) in introduction in two places after reference to sexual abuse or neglect inserted reference to exploitation; and made minor changes in style. Amendment effective October 1, 1999.

52-3-805. Adult protective service teams. (1) The county attorney or the department of public health and human services shall convene one or more temporary or permanent interdisciplinary adult protective service teams. These teams shall assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to older persons and persons with developmental disabilities who are victims of abuse, sexual abuse, neglect, or exploitation. The supervisor of adult protective services of the department of public health and human services or the department's designee shall serve as the team's coordinator. Members must include a social worker, a member of a local law enforcement agency, a representative of the medical profession, and a county attorney or the county attorney's designee, who is an attorney. Members may include other appropriate persons designated by the county attorney or the department.

(2) When the team considers a matter involving an adult with developmental disabilities in the care of a person providing developmental disabilities services, the team must also include a provider of developmental disability services other than the provider involved in the matter under review. The team shall make a report to the county attorney that contains a recommendation concerning any criminal prosecution to be brought pursuant to this part.

History: En. Sec. 1, Ch. 662, L. 1985; amd. Sec. 12, Ch. 609, L. 1987; Sec. 53-5-505, MCA 1989; redes. 52-3-805 by Code Commissioner, 1991; amd. Sec. 4, Ch. 167, L. 1993;

amd. Sec. 2, Ch. 421, L. 1993; amd. Sec. 2, Ch. 426, L. 1993; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 364, Ch. 546, L. 1995.

Cross-References

Office of County Attorney, Title 7, ch. 4, part 27.

Local government law enforcement, Title 7, ch. 32.

Licensing of medical doctors, Title 37, ch. 3.

Licensing of social workers, Title 37, ch. 22.

County departments of public welfare, Title 53, ch. 2, part 3.

52-3-806 through 52-3-810 reserved.

52-3-811. Reports. (1) When the professionals and other persons listed in subsection (3) know or have reasonable cause to suspect that an older person or a person with a developmental disability known to them in their professional or official capacities has been subjected to abuse, sexual abuse, neglect, or exploitation, they shall:

(a) if the person is not a resident of a long-term care facility, report the matter to:

(i) the department or its local affiliate; or

(ii) the county attorney of the county in which the person resides or in which the acts that are the subject of the report occurred;

(b) if the person is a resident of a long-term care facility, report the matter to the long-term care ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department. The department shall investigate the matter pursuant to its authority in 50-5-204 and, if it finds any allegations of abuse, sexual abuse, neglect, or exploitation contained in the report to be substantially true, forward a copy of the report to the county attorney as provided in subsection (1)(a)(ii).

(2) If the report required in subsection (1) involves an act or omission of the department that may be construed as abuse, sexual abuse, neglect, or exploitation, a copy of the report may not be sent to the department but must be sent instead to the county attorney of the county in which the older person or the person with a developmental disability resides or in which the acts that are the subject of the report occurred.

(3) Professionals and other persons required to report are:

(a) a physician, resident, intern, professional or practical nurse, physician's assistant, or member of a hospital staff engaged in the admission, examination, care, or treatment of persons;

(b) an osteopath, dentist, denturist, chiropractor, optometrist, podiatrist, medical examiner, coroner, or any other health or mental health professional;

(c) an ambulance attendant;

(d) a social worker or other employee of the state, a county, or a municipality assisting an older person or a person with a developmental disability in the application for or receipt of public assistance payments or services;

(e) a person who maintains or is employed by a roominghouse, retirement home or complex, nursing home, group home, adult foster care home, adult day-care center, or personal care facility or an agency or individual that provides home health services or personal care in the home;

(f) an attorney, unless the attorney acquired knowledge of the facts required to be reported from a client and the attorney-client privilege applies;

(g) a peace officer or other law enforcement official;

(h) a person providing services to an older person or a person with a developmental disability pursuant to a contract with a state or federal agency; and

(i) an employee of the department while in the conduct of the employee's duties.

(4) Any other persons or entities may, but are not required to, submit a report in accordance with subsection (1).

History: En. Sec. 4, Ch. 623, L. 1983; amd. Sec. 13, Ch. 548, L. 1985; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 5, Ch. 198, L. 1989; Sec. 53-5-511, MCA 1989; redes. 52-3-811 by Code Commissioner, 1991; amd. Sec. 5, Ch. 167, L. 1993; amd. Sec. 3, Ch. 421, L. 1993; amd. Sec. 154, Ch. 418, L. 1995; amd. Sec. 7, Ch. 465, L. 1995; amd. Sec. 365, Ch. 546, L. 1995; amd. Sec. 4, Ch. 196, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 196 in (3)(e) after "retirement home" inserted "or complex" and after "adult foster care home" inserted language regarding entity or individual who provides home health services or personal care in the home; inserted (3)(i) regarding employee of department; in (4) inserted "entities"; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Office of County Attorney, Title 7, ch. 4, part 27.

Local government law enforcement, Title 7, ch. 32.

Licensing of medical doctors, Title 37, ch. 3.

Licensing of social workers, Title 37, ch. 22.

Long-term care facilities — licensing, Title 50, ch. 5, part 2.

County departments of public welfare, Title 53, ch. 2, part 3.

52-3-812. Content of report. (1) The report required by 52-3-811 may be made in writing or orally, by telephone or in person. A person who receives an oral report shall prepare it in writing as soon as possible.

(2) The report referred to under this section must contain:

(a) the names and addresses of the older person or the person with a developmental disability and the person, if any, responsible for that person's care;

(b) the name and address, if available, of the person who is alleged to have abused, sexually abused, neglected, or exploited the older person or the person with a developmental disability;

(c) to the extent known, the person's age and the nature and extent of the abuse, sexual abuse, neglect, or exploitation, including any evidence of previous injuries, abuse, sexual abuse, neglect, or exploitation sustained by the older person or the person with a developmental disability and any evidence of prior instances of abuse, sexual abuse, neglect, or exploitation of other older persons or persons with developmental disabilities committed by the person alleged to have committed abuse, sexual abuse, neglect, or exploitation; and

(d) the name and address of the person making the report.

History: En. Sec. 5, Ch. 623, L. 1983; amd. Sec. 6, Ch. 198, L. 1989; Sec. 53-5-512, MCA 1989; redes. 52-3-812 by Code Commissioner, 1991; amd. Sec. 6, Ch. 167, L. 1993; amd. Sec. 7, Ch. 465, L. 1995; amd. Sec. 5, Ch. 196, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 196 in (2)(c) after "previous injuries" inserted "abuse, sexual abuse, neglect, or exploitation" and after "developmental disability" inserted language regarding evidence of prior abuse, sexual abuse, neglect, or exploitation committed by the person alleged to have committed abuse, sexual abuse, neglect, or exploitation; and made minor changes in style. Amendment effective October 1, 1999.

52-3-813. Confidentiality. (1) The case records of the department, its local affiliate, the county attorney, and the court concerning actions taken under this part and all reports made pursuant to 52-3-811 must be kept confidential except as provided by this section. For the purposes of this section, the term "case records" includes records of an investigation of a report of abuse, sexual abuse, neglect, or exploitation.

(2) The records and reports required to be kept confidential by subsection (1) may be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a physician who is caring for an older person or a person with a developmental disability who the physician reasonably believes was abused, sexually abused, neglected, or exploited;

(b) a legal guardian or conservator of the older person or the person with a developmental disability if the identity of the person who made the report is protected and the legal guardian or conservator is not the person suspected of the abuse, sexual abuse, neglect, or exploitation;

(c) the person named in the report as allegedly being abused, sexually abused, neglected, or exploited if that person is not legally incompetent;

(d) any person engaged in bona fide research if the person alleged in the report to have committed the abuse, sexual abuse, neglect, or exploitation is later convicted of an offense constituting abuse, sexual abuse, neglect, or exploitation and if the identity of the older person or the person with a developmental disability who is the subject of the report is not disclosed to the researcher;

(e) an adult protective service team. Members of the team are required to keep information about the subject individuals confidential.

(f) an authorized representative of a provider of services to a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability if:

(i) the department and the provider are parties to a contested case proceeding under Title 2, chapter 4, part 6, resulting from action by the department adverse to the license of the provider and if information contained in the records or reports of the department is relevant to the case;

(ii) disclosure to the provider is determined by the department to be necessary to protect an interest of a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability; or

(iii) the person is carrying out background screening or employment- or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with an older person or a person with a developmental disability through employment or volunteer activities if the disclosure is limited to information that indicates a risk to an older person or a person with a developmental disability posed by the employee or volunteer, as determined by the department. A request for information under this subsection must be made in writing.

(g) an employee of the department if disclosure of the record or report is necessary for administration of a program designed to benefit a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability;

(h) an authorized representative of a guardianship program approved by the department if the department determines that disclosure to the program or to a person designated by the program is necessary for the proper provision of guardianship services to a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability;

(i) protection and advocacy systems authorized under the provisions of 29 U.S.C. 794e, 42 U.S.C. 6042, and 42 U.S.C. 10805;

(j) the news media if disclosure is limited to confirmation of factual information regarding how the case was handled and does not violate the privacy rights of the older person, person with a developmental disability, or alleged perpetrator of abuse, sexual abuse, neglect, or exploitation, as determined by the department;

(k) a coroner or medical examiner who is determining the cause of death of an older person or a person with a developmental disability;

(l) a person about whom a report has been made and that person's attorney with respect to relevant records pertaining to that person only without disclosing the identity of the person who made the report or any other person whose safety might be endangered through disclosure;

(m) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of abuse, sexual abuse, neglect, or exploitation of an older person or a person with a developmental disability; and

(n) a department, agency, or organization, including a federal agency, military reservation, or tribal organization, that is legally authorized to receive, inspect, or investigate reports of abuse, sexual abuse, neglect, or exploitation of an older person or a person with a developmental disability and that meets the disclosure criteria contained in this section.

(3) The records and reports required to be kept confidential by subsection (1) must be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a county attorney or other law enforcement official who requires the information in connection with an investigation of a violation of this part;

(b) a court that has determined, in camera, that public disclosure of the report, data, information, or record is necessary for the determination of an issue before it;

(c) a grand jury upon its determination that the report, data, information, or record is necessary in the conduct of its official business.

(4) If the person who is reported to have abused, sexually abused, neglected, or exploited an older person or a person with a developmental disability is the holder of a license, permit, or certificate issued by the department of commerce under the provisions of Title 37 or issued by any other entity of state government, the report may be submitted to the entity that issued the license, permit, or certificate.

History: En. Sec. 6, Ch. 623, L. 1983; amd. Sec. 2, Ch. 662, L. 1985; amd. Sec. 63, Ch. 83, L. 1989; amd. Sec. 7, Ch. 198, L. 1989; Sec. 53-5-513, MCA 1989; redes. 52-3-813 by Code Commissioner, 1991; amd. Sec. 7, Ch. 167, L. 1993; amd. Sec. 4, Ch. 421, L. 1993; amd. Sec. 58, Ch. 18, L. 1995; amd. Sec. 5, Ch. 465, L. 1995; amd. Sec. 366, Ch. 546, L. 1995; amd. Sec. 6, Ch. 196, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 196 in (1) inserted second sentence defining case records; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Right to privacy, Art. II, Sec. 10, Mont. Const.

Libel and slander, Title 27, ch. 1, part 8.

Guardianship and conservatorship, Title 72, ch. 5.

52-3-814. Immunity from civil and criminal liability. (1) A person who makes a report required or authorized to be made under 52-3-811 is immune from civil or criminal liability that might otherwise be incurred or imposed as a result of the report unless the report is false in any material respect and the person acted in bad faith or with malicious purpose.

(2) A person who provides information or who uses information obtained pursuant to 52-3-813(2) to refuse to hire or to discharge an employee, volunteer, or other person who through their employment or volunteer activities may have unsupervised contact with an older person or a person with a developmental disability is immune from civil liability unless the person providing or using the information acts in bad faith or with malicious purpose.

History: En. Sec. 7, Ch. 623, L. 1983; Sec. 53-5-514, MCA 1989; redes. 52-3-814 by Code Commissioner, 1991; amd. Sec. 6, Ch. 465, L. 1995.

Cross-References

Freedom of speech, Art. II, sec. 7, Mont. Const.

Unsworn falsification to authorities, 45-7-203.

52-3-815. Evidence of abuse, sexual abuse, neglect, or exploitation to be gathered and submitted. (1) A person or agency receiving a report of suspected abuse, sexual abuse, neglect, or exploitation under 52-3-811 shall prepare a written description of the conditions regarded as evidence of abuse, sexual abuse, neglect, or exploitation and may, with the consent of an allegedly abused, sexually abused, neglected, or exploited older person or person with a developmental disability or without consent of the person if it appears that the person is an incapacitated person, take or cause to be taken photographs of an area of trauma visible on the body of the allegedly abused, sexually abused, neglected, or exploited person and regarded as evidence of abuse, sexual abuse, neglect, or exploitation.

(2) A physician required to report under 52-3-811 may, with the consent of an allegedly abused, sexually abused, neglected, or exploited older person or person with a developmental disability or without consent of the person if it appears that the person is an incapacitated person, require x-rays or other appropriate medical tests or procedures that would, in the professional opinion of the physician, assist in establishing evidence related to the allegation of abuse, sexual abuse, neglect, or exploitation.

(3) Evidence authorized to be gathered under this section must be submitted with the report required under 52-3-811 to the authorities designated in 52-3-811 as soon as possible after submission of the report.

History: En. Sec. 3, Ch. 716, L. 1991; amd. Sec. 8, Ch. 167, L. 1993; amd. Sec. 7, Ch. 465, L. 1995; amd. Sec. 7, Ch. 196, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 196 throughout (1) and (2) after reference to sexual abuse or neglect inserted reference to exploitation; and made minor changes in style. Amendment effective October 1, 1999.

52-3-816 through 52-3-820 reserved.

52-3-821. Admissibility of evidence. In any proceeding resulting from a report made pursuant to the provisions of this part or in any proceeding where the report or its content is sought to be introduced into evidence, the report or its content or any other fact related to the report or to the condition of the person who is the subject of the report may not be excluded on the ground that the matter is or may be the subject of a privilege granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.

History: En. Sec. 8, Ch. 623, L. 1983; amd. Sec. 8, Ch. 198, L. 1989; Sec. 53-5-521, MCA 1989; redes. 52-3-821 by Code Commissioner, 1991.

52-3-822 through 52-3-824 reserved.

52-3-825. Penalties. (1) Any person who purposely or knowingly fails to make a report required by 52-3-811 or discloses or fails to disclose the contents of a case record or report in violation of 52-3-813 is guilty of an offense and upon conviction is punishable as provided in 46-18-212.

(2) Any individual who purposely or knowingly abuses, sexually abuses, neglects, or exploits an older person or a person with a developmental disability is guilty of a misdemeanor and upon a first conviction may be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. Upon a second or succeeding conviction, an individual may be imprisoned for a term not to exceed 10 years and may be fined an amount not to exceed $10,000, or both.

History: En. Sec. 10, Ch. 623, L. 1983; amd. Sec. 2, Ch. 668, L. 1985; amd. Sec. 1, Ch. 411, L. 1987; amd. Sec. 9, Ch. 198, L. 1989; Sec. 53-5-525, MCA 1989; redes. 52-3-825 by Code Commissioner, 1991; amd. Sec. 9, Ch. 167, L. 1993; amd. Sec. 7, Ch. 465, L. 1995; amd. Sec. 8, Ch. 196, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 196 in (2) substituted "misdemeanor" for "offense", increased maximum fine from $500 to $1,000, and increased jail time from 6 months to 1 year; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

When no penalty specified — misdemeanor, 46-18-212.

CHAPTER 4

SERVICES TO THE DISABLED

Part 1 — Developmentally Disabled—Protective Services (Repealed. Sec. 9, Ch. 465, L. 1995)

Part 2 — Physically Disabled—Community Home Licensing

52-4-201. Purpose.
52-4-202. Definitions.
52-4-203. Licensing.
52-4-204. Health and safety standards.
52-4-205. Rulemaking.

Part 1

Developmentally Disabled — Protective Services (Repealed. Sec. 9, Ch. 465, L. 1995)

Part Compiler's Comments

Histories of Repealed Sections:

52-4-101. En. Sec. 1, Ch. 508, L. 1973; R.C.M. 1947, 71-1901; amd. Sec. 97, Ch. 609, L. 1987; Sec. 53-20-401, MCA 1989; redes. 52-4-101 by Code Commissioner, 1991.

52-4-102. En. Sec. 2, Ch. 508, L. 1973; R.C.M. 1947, 71-1902; amd. Sec. 1, Ch. 343, L. 1981; amd. Sec. 98, Ch. 609, L. 1987; Sec. 53-20-402, MCA 1989; redes. 52-4-102 by Code Commissioner, 1991.

52-4-103. En. Sec. 3, Ch. 508, L. 1973; amd. Sec. 39, Ch. 37, L. 1977; R.C.M. 1947, 71-1903; amd. Sec. 2, Ch. 343, L. 1981; Sec. 53-20-403, MCA 1989; redes. 52-4-103 by Code Commissioner, 1991.

52-4-104. En. Sec. 5, Ch. 508, L. 1973; R.C.M. 1947, 71-1905; amd. Sec. 4, Ch. 343, L. 1981; amd. Sec. 99, Ch. 609, L. 1987; Sec. 53-20-405, MCA 1989; redes. 52-4-104 by Code Commissioner, 1991.

52-4-105. En. Sec. 6, Ch. 508, L. 1973; R.C.M. 1947, 71-1906; amd. Sec. 5, Ch. 343, L. 1981; Sec. 53-20-406, MCA 1989; redes. 52-4-105 by Code Commissioner, 1991.

52-4-106. En. Sec. 8, Ch. 508, L. 1973; R.C.M. 1947, 71-1908; Sec. 53-20-408, MCA 1989; redes. 52-4-106 by Code Commissioner, 1991.

52-4-107. En. Sec. 9, Ch. 508, L. 1973; R.C.M. 1947, 71-1909; amd. Sec. 100, Ch. 609, L. 1987; Sec. 53-20-409, MCA 1989; redes. 52-4-107 by Code Commissioner, 1991.

52-4-108. En. Sec. 10, Ch. 508, L. 1973; R.C.M. 1947, 71-1910(1); amd. Sec. 101, Ch. 609, L. 1987; Sec. 53-20-410, MCA 1989; redes. 52-4-108 by Code Commissioner, 1991.

52-4-109 reserved.

52-4-110. En. Sec. 13, Ch. 508, L. 1973; R.C.M. 1947, 71-1913; Sec. 53-20-413, MCA 1989; redes. 52-4-110 by Code Commissioner, 1991.

Part 2

Physically Disabled — Community Home Licensing

Part Cross-References

Services and community homes for the physically disabled, Title 53, ch. 19, part 1.

52-4-201. Purpose. The legislature, in recognition of the needs of persons with severe disabilities and of the desirability of meeting those needs on a community level, establishes in 52-4-201 through 52-4-205 authority for the state to license community homes for persons with severe disabilities. Licensed community homes for persons with severe disabilities are for the purpose of providing residential settings for persons with severe disabilities receiving services funded through state-administered programs who otherwise are unable to live independently and who are determined to be capable of residing in noninstitutional settings.

History: En. Sec. 8, Ch. 330, L. 1989; Sec. 53-19-201, MCA 1989; redes. 52-4-201 by Code Commissioner, 1991.

52-4-202. Definitions. As used in 52-4-201 through 52-4-205, the following definitions apply:

(1) "Community home for persons with severe disabilities" means a family-oriented residence that is designed to provide residential services for two to eight persons with severe disabilities and that does not provide skilled or intermediate nursing care. This definition does not preclude the provision of skilled or intermediate nursing care by third-person providers.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Disability" means a permanent physical or mental condition recognized as a disability by Title VII of the federal Rehabilitation Act of 1973 (29 U.S.C. 796, et seq.), as may be amended.

(4) "Severe disability" means a permanent disability that substantially limits major life activity, such as walking, self-care, seeing, hearing, speaking, learning, reasoning, judgment, or memory, and that can be diagnosed by a physician. The term includes the condition of a person with severe disabilities as defined in 53-19-102.

History: En. Sec. 9, Ch. 330, L. 1989; Sec. 53-19-202, MCA 1989; redes. 52-4-202 by Code Commissioner, 1991; amd. Sec. 368, Ch. 546, L. 1995.

52-4-203. Licensing. (1) A community home for persons with severe disabilities must be licensed annually by the department.

(2) The department may also issue temporary and provisional licenses.

History: En. Sec. 10, Ch. 330, L. 1989; Sec. 53-19-203, MCA 1989; redes. 52-4-203 by Code Commissioner, 1991.

52-4-204. Health and safety standards. (1) A community home for persons with severe disabilities must be certified annually for fire and life safety by the department of justice. The department of justice shall notify the department whenever a community home has been certified or refused certification.

(2) (a) Local health officers shall inspect a community home for persons with severe disabilities to ensure compliance with health and safety standards. If for any reason the local authority cannot complete the inspection in a timely manner, the department of public health and human services may make the inspection to ensure compliance with the standards.

(b) The inspecting health officer shall notify the department whether a community home is or is not in compliance with applicable standards.

(c) A reasonable fee may be charged by health authorities conducting compliance inspections.

History: En. Sec. 11, Ch. 330, L. 1989; Sec. 53-19-204, MCA 1989; redes. 52-4-204 by Code Commissioner, 1991; amd. Sec. 1, Ch. 706, L. 1991; amd. Sec. 155, Ch. 418, L. 1995; amd. Sec. 369, Ch. 546, L. 1995.

52-4-205. Rulemaking. (1) The department shall, for the purpose of licensing, adopt rules to govern administration, operation, and health and safety requirements for community homes for persons with severe disabilities in order to protect rights of residents. The department shall provide for temporary and provisional licensing.

(2) The state fire prevention and investigation program of the department of justice shall provide advice and recommendations to the department concerning licensing requirements for health and safety.

History: En. Sec. 12, Ch. 330, L. 1989; Sec. 53-19-205, MCA 1989; redes. 52-4-205 by Code Commissioner, 1991; amd. Sec. 1, Ch. 706, L. 1991; amd. Sec. 156, Ch. 418, L. 1995; amd. Sec. 370, Ch. 546, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

CHAPTER 5

CORRECTIONS

Part 1 — Youthful Offenders

52-5-101. Establishment of state youth correctional facilities — prohibitions.
52-5-102. Control and management of youth correctional facilities.
52-5-103. Cooperative agreements for services with governing body of Indian tribe.
52-5-104. Repealed.
52-5-105. Superintendents to manage facilities.
52-5-106. Curricula at facilities.
52-5-107. Maximum age of commitment.
52-5-108. Medical examination before admission — records required to accompany youth committed.
52-5-109. Commitment expenses — arrangement for transportation.
52-5-110. Transfer of child to other facility or institution — notice.
52-5-111. Commutation of sentence to state prison facility and transfer of prisoner to youth correctional facility.
52-5-112. University aid to residents of schools.
52-5-113. Publication of information to facilitate return of youth leaving a state youth correctional facility or program without permission.
52-5-114. Penalty for aiding resident in leaving or not returning to a youth correctional facility.
52-5-115 through 52-5-119 reserved.
52-5-120. Youth industries programs.
52-5-121. Rulemaking authority.
52-5-122 through 52-5-124 reserved.
52-5-125. Repealed.
52-5-126. Youth parole agreement.
52-5-127. Control over youth released under parole agreement.
52-5-128. Detention of youth who violates parole agreement.
52-5-129. Hearing on alleged violation of parole agreement — right to appeal outcome.

Chapter Cross-References

Department of Corrections, Title 2, ch. 15, part 23; Title 53, ch. 1, part 2.

Private correctional facilities, Title 53, ch. 30, part 6.

Part 1

Youthful Offenders

52-5-101. Establishment of state youth correctional facilities — prohibitions. (1) The department of corrections, within the annual or biennial budgetary appropriation, may establish, maintain, and operate facilities to properly provide custody, assessment, care, supervision, treatment, education, rehabilitation, and work and skill development for youth in need of these services. The youth must be 10 years of age or older and under 18 years of age. The facilities include but are not limited to the Pine Hills youth correctional facility in Miles City.

(2) A youth alleged or found to be a youth in need of intervention may not be placed in a state youth correctional facility as defined in 41-5-103.

History: En. Sec. 8, Ch. 320, L. 1967; amd. Sec. 44, Ch. 120, L. 1974; amd. Sec. 44, Ch. 37, L. 1977; R.C.M. 1947, 80-1410; amd. Sec. 1, Ch. 381, L. 1985; amd. Sec. 3, Ch. 737, L. 1985; amd. Sec. 2, Ch. 11, Sp. L. June 1986; amd. Sec. 102, Ch. 609, L. 1987; amd. Sec. 1, Ch. 212, L. 1989; Sec. 53-30-202, MCA 1989; redes. 52-5-101 by Code Commissioner,

1991; amd. Sec. 6, Ch. 548, L. 1991; amd. Sec. 371, Ch. 546, L. 1995; amd. Sec. 231, Ch. 42, L. 1997; amd. Sec. 13, Ch. 189, L. 1997; amd. Sec. 59, Ch. 550, L. 1997.

Cross-References

Jurisdiction of Youth Court to age 21, 41-5-205.

Transfer of youth to District Court after Youth Court disposition — jurisdiction to age 25, 41-5-208.

Limitations on placement of youth in state youth correctional facility, 41-5-1512.

52-5-102. Control and management of youth correctional facilities. The facilities provided for in 52-5-101 shall exercise their functions under the supervision and general management of the department of corrections. Except where otherwise provided by law, the department by rules shall establish standards of care and policies of admission, transfers, discharge, and parole supervision in order to provide adequate care for children and adequate service to the courts. Policies of admission may include criteria for medical examinations required under 52-5-108. The department shall develop special programs within each facility that are adaptable to the particular needs of its operation.

History: En. Sec. 9, Ch. 320, L. 1967; amd. Sec. 45, Ch. 120, L. 1974; R.C.M. 1947, 80-1411; amd. Sec. 103, Ch. 609, L. 1987; Sec. 53-30-203, MCA 1989; redes. 52-5-102 by Code Commissioner, 1991; amd. Sec. 1, Ch. 253, L. 1991; amd. Sec. 372, Ch. 546, L. 1995; amd. Sec. 60, Ch. 550, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Disposition of contraband in correctional institution, 53-1-105.

52-5-103. Cooperative agreements for services with governing body of Indian tribe. (1) The department of corrections may enter into agreements with the governing body of an Indian tribe within the state for residential, educational, evaluation, and parole services maintained by the department for children who have been adjudicated delinquent by the tribal court, subject to the provisions of this part and parts 1 and 2 of Title 53, chapter 1.

(2) Any agreement entered into under subsection (1) must also satisfy the requirements of Title 18, chapter 11.

History: En. Sec. 1, Ch. 118, L. 1975; R.C.M. 1947, 80-1419; amd. Sec. 12, Ch. 309, L. 1981; amd. Sec. 177, Ch. 575, L. 1981; amd. Sec. 104, Ch. 609, L. 1987; Sec. 53-30-204, MCA 1989; redes. 52-5-103 by Code Commissioner, 1991; amd. Sec. 373, Ch. 546, L. 1995; amd. Sec. 61, Ch. 550, L. 1997.

52-5-104. Repealed. Sec. 1, Ch. 516, L. 1993, and Sec. 19, Ch. 579, L. 1993.

History: En. Sec. 10, Ch. 320, L. 1967; amd. Sec. 46, Ch. 120, L. 1974; R.C.M. 1947, 80-1412; amd. Sec. 11, Ch. 140, L. 1985; Sec. 53-30-205, MCA 1989; redes. 52-5-104 by Code Commissioner, 1991.

52-5-105. Superintendents to manage facilities. Each facility provided for in 52-5-101 is under the immediate management and control of a superintendent. If the parent or legal guardian of a resident of a facility cannot be located, the superintendent or his designee may consent to necessary medical treatment for the resident of the facility under his management and control.

History: En. Sec. 46, Ch. 199, L. 1965; amd. Sec. 11, Ch. 320, L. 1967; R.C.M. 1947, 80-2202; amd. Sec. 1, Ch. 527, L. 1989; Sec. 53-30-206, MCA 1989; redes. 52-5-105 by Code Commissioner, 1991; amd. Sec. 1, Ch. 117, L. 1991.

52-5-106. Curricula at facilities. The academic and vocational curricula in facilities containing academic and vocational training must include academic and vocational subjects that conform to the Montana school accreditation standards set by the board of public education.

History: En. Sec. 47, Ch. 199, L. 1965; amd. Sec. 12, Ch. 320, L. 1967; R.C.M. 1947, 80-2203; Sec. 53-30-207, MCA 1989; redes. 52-5-106 by Code Commissioner, 1991; amd. Sec. 1, Ch. 68, L. 1993.

Cross-References

School instruction and special programs, Title 20, ch. 7.

52-5-107. Maximum age of commitment. A youth who has attained 18 years of age may not be committed by any youth court to the department of corrections.

History: En. Sec. 48, Ch. 199, L. 1965; amd. Sec. 13, Ch. 320, L. 1967; amd. Sec. 15, Ch. 262, L. 1969; R.C.M. 1947, 80-2204; amd. Sec. 105, Ch. 609, L. 1987; amd. Sec. 2, Ch. 212, L. 1989; Sec. 53-30-208, MCA 1989; redes. 52-5-107 by Code Commissioner, 1991; amd. Sec. 374, Ch. 546, L. 1995; amd. Sec. 62, Ch. 550, L. 1997.

Cross-References

Youth Court — jurisdiction, 41-5-203.

Youth Court — retention of jurisdiction, 41-5-205.

52-5-108. Medical examination before admission — records required to accompany youth committed. (1) Before a youth is admitted for any purpose or for any length of time to the Pine Hills youth correctional facility or another facility under an order of commitment to the department of corrections, the youth must be examined by a licensed physician. A youth committed to the Pine Hills youth correctional facility or the department must be accompanied by the order of commitment, a medical examination report, an adequate social history, and any school records.

(2) The medical examination required under this section must be a current, complete physical examination of the youth.

History: En. Sec. 49, Ch. 199, L. 1965; amd. Sec. 14, Ch. 320, L. 1967; R.C.M. 1947, 80-2205; amd. Sec. 13, Ch. 609, L. 1987; Sec. 53-30-209, MCA 1989; redes. 52-5-108 by Code Commissioner, 1991; amd. Sec. 2, Ch. 253, L. 1991; amd. Sec. 375, Ch. 546, L. 1995; amd. Sec. 232, Ch. 42, L. 1997; amd. Sec. 14, Ch. 189, L. 1997.

52-5-109. Commitment expenses — arrangement for transportation. The expenses of committing a youth to the Pine Hills youth correctional facility or the department of corrections and transporting the youth to the Pine Hills youth correctional facility or the place designated by the department for it to receive custody, as well as the expense of returning the youth to the county of residence, must be borne by the county of residence. The district judge shall arrange for transportation of the youth to the place where the department has directed that it will receive custody of the youth.

History: En. Sec. 50, Ch. 199, L. 1965; amd. Sec. 15, Ch. 320, L. 1967; R.C.M. 1947, 80-2206; amd. Sec. 13, Ch. 609, L. 1987; Sec. 53-30-210, MCA 1989; redes. 52-5-109 by Code Commissioner, 1991; amd. Sec. 376, Ch. 546, L. 1995; amd. Sec. 233, Ch. 42, L. 1997; amd. Sec. 15, Ch. 189, L. 1997.

Cross-References

Residence — rules for determining, 1-1-215.

52-5-110. Transfer of child to other facility or institution — notice. The department of corrections, upon recommendation of the superintendent of a facility, may transfer a child resident in one of its youth correctional facilities to any other facility or institution under the jurisdiction and control of the department.

History: En. Sec. 53, Ch. 199, L. 1965; amd. Sec. 16, Ch. 320, L. 1967; R.C.M. 1947, 80-2209; amd. Sec. 25, Ch. 361, L. 1983; amd. Sec. 14, Ch. 363, L. 1983; amd. Sec. 10, Ch. 151, L. 1985; amd. Sec. 13, Ch. 14, Sp. L. June 1986; amd. Sec. 106, Ch. 609, L. 1987; Sec. 53-30-211, MCA 1989; redes. 52-5-110 by Code Commissioner, 1991; amd. Sec. 377, Ch. 546, L. 1995.

52-5-111. Commutation of sentence to state prison facility and transfer of prisoner to youth correctional facility. (1) Upon the application of a person who has not attained 18 years of age who has been sentenced to a state prison facility or upon the application of the youth's parents or guardian, the governor may, after consulting with the department of corrections and with the approval of the board of pardons and parole, commute the sentence by committing the person who may benefit from programs offered at a youth correctional facility to the department of corrections until the youth is 18 years of age or until sooner placed or discharged.

(2) If the youth's behavior after being committed to the department of corrections indicates that the youth is not a proper person to reside at one of the youth correctional facilities, the governor, after consulting with the department of corrections and with the approval of the board of pardons and parole, may revoke the commutation and return the youth to a state prison facility to serve out the youth's unexpired term, and the time spent by the youth at one of the youth correctional facilities or while a refugee from one of the youth correctional facilities is not considered as a part of the youth's original sentence.

(3) Upon recommendation of the warden and with the approval of the department of corrections, a person under 18 years of age who has been sentenced to a state prison facility and who may benefit from programs offered at a youth correctional facility may be transferred to any youth correctional facility under the jurisdiction and control of the department of corrections.

(4) If the youth's behavior after transfer to a youth correctional facility indicates that the youth might be released on parole or that the youth's sentence might be commuted and the youth be discharged from custody, the superintendent of the facility, with the approval of the department of corrections, may make an appropriate recommendation to the board of pardons and parole and the governor, who may in their discretion parole the person or commute the youth's sentence.

(5) If the youth's behavior after transfer to a youth correctional facility indicates that the youth is not a proper person to reside in the facility, upon recommendation of the superintendent and with the approval of the department of corrections, the youth must be returned to a state prison facility to serve out the unexpired term.

History: En. Sec. 54, Ch. 199, L. 1965; amd. Sec. 17, Ch. 320, L. 1967; amd. Sec. 1, Ch. 367, L. 1971; R.C.M. 1947, 80-2210; amd. Sec. 19, Ch. 38, L. 1979; amd. Sec. 3, Ch. 233, L. 1983; amd. Sec. 107, Ch. 609, L. 1987; amd. Sec. 3, Ch. 212, L. 1989; Sec. 53-30-212, MCA 1989; redes. 52-5-111 by Code Commissioner, 1991; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 7, Ch. 579, L. 1993; amd. Sec. 378, Ch. 546, L. 1995; amd. Sec. 63, Ch. 550, L. 1997.

52-5-112. University aid to residents of schools. The department of corrections may, on the recommendation of the superintendent, authorize a resident of a state youth correctional facility who has completed high school and who is otherwise eligible to receive up to $800 per year toward the resident's expenses incurred in attending a unit of the Montana university system. The money may be used for transportation, clothing, books, board, and room and must be paid in the same manner as other expenses of the school. The board of regents of higher education may waive fees and tuition for these residents pursuant to 20-25-421. No more than eight residents of each state youth correctional facility may receive these benefits each year. The department shall notify the board of regents before August 1 of each year of the residents that it has designated to receive the benefits for the next school year.

History: En. Sec. 57, Ch. 199, L. 1965; amd. Sec. 57, Ch. 120, L. 1974; R.C.M. 1947, 80-2213; amd. Sec. 13, Ch. 609, L. 1987; amd. Sec. 2, Ch. 170, L. 1989; Sec. 53-30-213, MCA 1989; redes. 52-5-112 by Code Commissioner, 1991; amd. Sec. 379, Ch. 546, L. 1995; amd. Sec. 234, Ch. 42, L. 1997; amd. Sec. 16, Ch. 189, L. 1997.

Cross-References

University System, Title 20, ch. 25.

52-5-113. Publication of information to facilitate return of youth leaving a state youth correctional facility or program without permission. The department may publish the name and picture of and the offense and other information relating to a youth who has left a state youth correctional facility or program operated by the department or who is committed to the department and who presents a threat to public safety if the publication is determined by the department to be necessary to facilitate the youth's return and to protect the public.

History: En. Sec. 55, Ch. 199, L. 1965; amd. Sec. 18, Ch. 320, L. 1967; amd. Sec. 1, Ch. 313, L. 1973; R.C.M. 1947, 80-2211; amd. Sec. 20, Ch. 38, L. 1979; amd. Sec. 2, Ch. 381, L. 1985; amd. Sec. 108, Ch. 609, L. 1987; Sec. 53-30-214, MCA 1989; redes. 52-5-113 by Code Commissioner, 1991; amd. Sec. 380, Ch. 546, L. 1995; amd. Sec. 235, Ch. 42, L. 1997; amd. Sec. 17, Ch. 189, L. 1997; amd. Sec. 64, Ch. 550, L. 1997.

52-5-114. Penalty for aiding resident in leaving or not returning to a youth correctional facility. (1) A person is guilty of an offense if he purposely or knowingly:

(a) permits or assists a resident of a youth correctional facility to leave a facility without permission;

(b) permits or assists a resident's failure to return to a youth correctional facility from which he had permission to leave;

(c) furnishes or attempts to furnish to such a resident a tool, weapon, or other article with the intent of aiding him to leave without permission or to not return; or

(d) harbors or conceals a resident who has left without permission.

(2) Upon conviction of a violation of subsection (1), a person shall be punished by imprisonment for a term of not less than 6 months or more than 2 years or by a fine not exceeding $1,000 or by both such fine and imprisonment.

History: En. Sec. 56, Ch. 199, L. 1965; amd. Sec. 19, Ch. 320, L. 1967; R.C.M. 1947, 80-2212; amd. Sec. 109, Ch. 609, L. 1987; amd. Sec. 1, Ch. 519, L. 1989; Sec. 53-30-215, MCA 1989; redes. 52-5-114 by Code Commissioner, 1991.

Cross-References

Felony defined, 45-2-101.

52-5-115 through 52-5-119 reserved.

52-5-120. Youth industries programs. The department of corrections may:

(1) establish industries programs in state youth correctional facilities that:

(a) assist in the training and rehabilitation of residents at state youth correctional facilities; and

(b) provide the production or manufacture of products and the rendering of services that may be needed by:

(i) a department or agency of the state of Montana or a unit of local government;

(ii) an agency of the federal government; or

(iii) an office or agency of another state or a political subdivision of another state;

(2) contract with private industry for the sale of goods produced or manufactured at state youth correctional facilities; and

(3) fix the purchase price for goods and services available under the industries program established in subsection (1).

History: En. Sec. 1, Ch. 434, L. 1991; amd. Sec. 381, Ch. 546, L. 1995.

Cross-References

Institutional industries, Title 53, ch. 1, part 3.

Prison industries training program — purpose and scope, 53-30-131.

52-5-121. Rulemaking authority. The department of corrections may adopt rules necessary for administration of industries programs authorized in 52-5-120. Rules adopted by the department may include rules regarding:

(1) requirements for participation of youth in industries programs;

(2) the type of training and experience to be provided to youth under these programs;

(3) the type of goods and services to be sold under the industries programs;

(4) contracts with private industry for the sale of goods produced or manufactured at state youth correctional facilities; and

(5) payment of wages to youth working in industries programs.

History: En. Sec. 2, Ch. 434, L. 1991; amd. Sec. 382, Ch. 546, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

52-5-122 through 52-5-124 reserved.

52-5-125. Repealed. Secs. 2, 3, Ch. 511, L. 1991.

History: En. Sec. 1, Ch. 630, L. 1987; Sec. 53-30-225, MCA 1989; redes. 52-5-125 by Code Commissioner, 1991.

52-5-126. Youth parole agreement. (1) A youth released by the department of corrections from one of the state youth correctional facilities to the supervision, custody, and control of the department shall, before the youth's release, sign a parole agreement containing:

(a) a statement of the terms and conditions of the release, including a list of the acts that, if committed by the youth, may result in a return to the facility; and

(b) a statement that if the department or any person alleges any violation of the terms and conditions of the agreement, the youth is entitled to a hearing as provided for in 52-5-129 before being returned to the facility.

(2) A youth released from a state youth correctional facility for commitment to a mental health facility pursuant to Title 53, chapter 21, part 1, shall sign a parole agreement that will remain in effect until the department no longer has custody of the youth.

History: En. Sec. 1, Ch. 158, L. 1969; amd. Sec. 48, Ch. 120, L. 1974; amd. Sec. 1, Ch. 429, L. 1975; R.C.M. 1947, 80-1414(part); amd. Sec. 110, Ch. 609, L. 1987; Sec. 53-30-226, MCA 1989; redes. 52-5-126 by Code Commissioner, 1991; amd. Sec. 2, Ch. 201, L. 1991; amd. Sec. 2, Ch. 358, L. 1993; amd. Sec. 383, Ch. 546, L. 1995; amd. Sec. 65, Ch. 550, L. 1997.

Cross-References

Youth Court — retention of jurisdiction, 41-5-205.

52-5-127. Control over youth released under parole agreement. The department of corrections has control over a youth released pursuant to a parole agreement under 52-5-126 until the youth attains 18 years of age unless the youth is discharged by the department before age 18. However, the youth is subject to the continuing jurisdiction of the youth courts of Montana, pursuant to 41-5-205, for acts committed by the youth while under the control of the department.

History: En. Sec. 2, Ch. 158, L. 1969; amd. Sec. 29, Ch. 94, L. 1973; amd. Sec. 49, Ch. 120, L. 1974; amd. Sec. 1, Ch. 15, L. 1975; R.C.M. 1947, 80-1415; amd. Sec. 13, Ch. 609, L. 1987; amd. Sec. 4, Ch. 212, L. 1989; Sec. 53-30-227, MCA 1989; redes. 52-5-127 by Code Commissioner, 1991; amd. Sec. 3, Ch. 358, L. 1993; amd. Sec. 384, Ch. 546, L. 1995; amd. Sec. 66, Ch. 550, L. 1997.

Cross-References

Adult rights, Art. II, sec. 14, Mont. Const.

52-5-128. Detention of youth who violates parole agreement. A youth who violates the terms and conditions of the youth's parole agreement or who escapes from a state youth correctional facility or program operated by the department may be detained by the department or by a law officer of the state, county, or city of the state upon notice in writing to the officer by the department to the effect that the youth has violated the terms and conditions of the youth's parole agreement or has escaped from a state youth correctional facility or program operated by the department.

History: En. Sec. 3, Ch. 158, L. 1969; amd. Sec. 50, Ch. 120, L. 1974; amd. Sec. 3, Ch. 429, L. 1975; R.C.M. 1947, 80-1416; amd. Sec. 13, Ch. 609, L. 1987; Sec. 53-30-228, MCA 1989; redes. 52-5-128 by Code Commissioner, 1991; amd. Sec. 385, Ch. 546, L. 1995; amd. Sec. 67, Ch. 550, L. 1997.

52-5-129. Hearing on alleged violation of parole agreement — right to appeal outcome. (1) When it is alleged by a juvenile parole officer that a youth has violated the terms of the youth's parole agreement, the youth must be granted a hearing at the site of the alleged violation or in the county in which the youth is residing or is found within 10 days after notice has been served on the youth or the youth is detained, whichever is earlier. At the discretion of the hearings officer, this hearing may be held by means of interactive video transmission. The purpose of the hearing is to determine whether the youth committed the violation and, if so, whether the violation is of such a nature that the youth should be returned to the youth correctional facility from which the youth was released or whether a different plan for custody and supervision of the youth should be pursued by the department of corrections.

(2) The youth, upon advice of an attorney, may waive the right to a hearing.

(3) With regard to this hearing, the youth must be given:

(a) written notice of the alleged violation of the parole agreement, including notice of the purpose of the hearing;

(b) a disclosure of the evidence against the youth and the facts constituting the alleged violation;

(c) the opportunity to be heard in person or by interactive video transmission and to present witnesses and documentary evidence to controvert the evidence against the youth and to show that there are compelling reasons that justify or mitigate the violation;

(d) the opportunity to have the hearings officer subpoena witnesses;

(e) the right to confront and cross-examine adverse witnesses in person or by means of interactive video transmission;

(f) the right to be represented by an attorney;

(g) a record of the hearing; and

(h) notice that a written statement as to the evidence relied upon in reaching the final decision and the reasons for the final decision will be provided by the hearings officer.

(4) The department shall provide a hearings officer to conduct the hearing. The department shall adopt rules necessary to effect a prompt and full review.

(5) If the hearings officer finds, by a preponderance of the evidence, that the youth did in fact commit the violation, the hearings officer shall make a recommendation to the department for the placement of the youth. In making this recommendation, the hearings officer may consider mitigating or aggravating circumstances. The youth or the youth's attorney may appeal the hearings officer's decision to the department director. The appeal must be made in writing within 5 days of the hearing. The department director or designee shall grant or deny the appeal within 5 days of receipt of the appeal.

(6) The youth may appeal the decision of the department director to the district court of the county in which the hearing was held by serving and filing a notice of appeal with the court within 10 days of the department director's decision. The youth may obtain a written transcript of the hearing from the department by giving written notice of appeal. The district court, upon receipt of a notice of appeal, shall order the department to promptly certify to the court a record of all proceedings before the department and shall proceed to a prompt hearing on the appeal based upon the record on appeal. The decision of the department may not be altered except for abuse of discretion or manifest injustice.

(7) Pending the hearing on a violation and pending the department's decision, a youth may not be detained except when the youth's detention or care is required to protect the person or property of the youth or of others or the youth may abscond or be removed from the community. The department shall determine the place and manner of detention pursuant to 41-5-348 and is responsible for the cost of the detention. Procedures for taking into custody and detention of a youth charged with violation of the youth's parole agreement are as provided in 41-5-321.

(8) If the decision is made to return the youth to the youth correctional facility from which the youth was released and the youth appeals that decision, the youth shall await the outcome of the appeal at the facility.

History: (1), (3) thru (7)En. 80-1414.1 by Sec. 2, Ch. 429, L. 1975; amd. Sec. 1, Ch. 231, L. 1977; Sec. 80-1414.1, R.C.M. 1947; (2)En. Sec. 1, Ch. 158, L. 1969; amd. Sec. 48, Ch. 120, L. 1974; amd. Sec. 1, Ch. 429, L. 1975; Sec. 80-1414, R.C.M. 1947; R.C.M. 1947, 80-1414(part), 80-1414.1; (8)En. Sec. 1, Ch. 242, L. 1979; amd. Sec. 31, Ch. 465, L. 1983; amd. Sec. 13, Ch. 475, L. 1987; amd. Sec. 111, Ch. 609, L. 1987; amd. Sec. 11, Ch. 434, L. 1989; Sec. 53-30-229, MCA 1989; redes. 52-5-129 by Code Commissioner, 1991; amd. Sec. 11, Ch. 547, L. 1991; amd. Sec. 386, Ch. 546, L. 1995; amd. Sec. 44, Ch. 286, L. 1997; amd. Sec. 68, Ch. 550, L. 1997; amd. Sec. 15, Ch. 532, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 532 in (7) in second sentence after "detention" inserted "pursuant to 41-5-348" and at end of third sentence deleted "41-5-331 through 41-5-334, and 41-5-344 through 41-5-349". Amendment effective October 1, 1999.

Cross-References

Release from custody, 41-5-322.

CHAPTER 6

BATTERED SPOUSES

Part 1 — Battered Spouses Grant Programs

52-6-101. Battered spouses and domestic violence grant program created.
52-6-102. Duties of department.
52-6-103. Authorized grantees — criteria for grants.
52-6-104. Authorized services of programs.
52-6-105. Funding.

Part 1

Battered Spouses Grant Programs

Part Cross-References

Department of Public Health and Human Services, Title 2, ch. 15, part 22.

Partner and family member assault, sexual assault, and stalking — safety and protection of victims, Title 40, ch. 15.

Criminal offense of partner or family member assault, 45-5-206.

Notice of rights to victim upon arrest in domestic violence situation, 46-6-602.

52-6-101. Battered spouses and domestic violence grant program created. There is a grant program established within the department of public health and human services for the allocation of grant money to local battered spouses and domestic violence programs.

History: En. Sec. 1, Ch. 677, L. 1979; amd. Sec. 11, Ch. 609, L. 1987; Sec. 40-2-401, MCA 1989; redes. 52-6-101 by Code Commissioner, 1991; amd. Sec. 387, Ch. 546, L. 1995.

52-6-102. Duties of department. The department of public health and human services:

(1) shall adopt rules necessary to carry out the purposes of this part;

(2) may spend no more than 5% of the appropriated funds for administrative costs of the program;

(3) shall accept federal funds that may be available for use in carrying out the provisions of this part;

(4) may use state funds as a match for federal funds if required; and

(5) may conduct research and compile statistics relating to battered spouses and domestic violence.

History: En. Sec. 5, Ch. 677, L. 1979; amd. Sec. 11, Ch. 609, L. 1987; Sec. 40-2-402, MCA 1989; redes. 52-6-102 by Code Commissioner, 1991; amd. Sec. 388, Ch. 546, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

52-6-103. Authorized grantees — criteria for grants. (1) The department of public health and human services shall award battered spouses and domestic violence grants only to local partner or family member assault programs that are locally controlled. Grants may be awarded to governmental or nongovernmental agencies or persons.

(2) Battered spouses and domestic violence grants are to be awarded on the following basis:

(a) demonstrated need;

(b) project merit;

(c) administrative design; and

(d) efficiency of administration.

History: En. Sec. 3, Ch. 677, L. 1979; amd. Sec. 11, Ch. 609, L. 1987; Sec. 40-2-403, MCA 1989; redes. 52-6-103 by Code Commissioner, 1991; amd. Sec. 32, Ch. 350, L. 1995; amd. Sec. 389, Ch. 546, L. 1995.

52-6-104. Authorized services of programs. (1) Local battered spouses and domestic violence programs may provide services that include but are not limited to the following:

(a) counseling for victims or their spouses;

(b) shelters or safe homes for victims;

(c) advocacy programs that assist victims in obtaining services and information; and

(d) educational programs relating to battered spouses and domestic violence designed for both the community at large and specialized groups such as hospital personnel and law enforcement officials.

(2) The services authorized in subsection (1) may be provided on a regional basis by a local battered spouses and domestic violence program if authorized by the department of public health and human services according to regional boundaries established by the department.

History: En. Sec. 4, Ch. 677, L. 1979; amd. Sec. 3, Ch. 493, L. 1981; amd. Sec. 11, Ch. 609, L. 1987; Sec. 40-2-404, MCA 1989; redes. 52-6-104 by Code Commissioner, 1991; amd. Sec. 390, Ch. 546, L. 1995.

52-6-105. Funding. (1) Revenue from the marriage license fee and the fee collected for filing a declaration of marriage without solemnization is the primary source of funding for the battered spouses and domestic violence program. The disposition of the marriage license fee is as established in 25-1-201.

(2) Twenty percent of the operational costs of a battered spouses and domestic violence program must come from the local community served by the program. The local contribution may include in-kind contributions.

History: En. Sec. 2, Ch. 677, L. 1979; amd. Sec. 4, Ch. 493, L. 1981; amd. Sec. 3, Ch. 12, L. 1983; amd. Sec. 2, Ch. 553, L. 1987; Sec. 40-2-405, MCA 1989; redes. 52-6-105 by Code Commissioner, 1991; amd. Sec. 52, Ch. 509, L. 1995.

Cross-References

Marriage license issuance — fee, 40-1-202.

Declaration of marriage without solemnization — fee, 40-1-311.

TITLE 53

SOCIAL SERVICES AND INSTITUTIONS

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2. Administration of Public Assistance.
3. General Relief.
4. Children's Services.
5. Adult Services.
6. Health Care Services.
7. Vocational Rehabilitation.
8. Economic Opportunity. Repealed. Sec. 63, Ch. 16, L. 1991.
9. Services for Victims of Crime.
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Chapters 11 through 17 reserved.
18. Self-Sufficiency Trusts.
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20. Developmental Disabilities.
21. Mentally Ill.
22. Interstate Compact on Mental Health.
23. Eugenical Sterilization. Repealed. Sec. 1, Ch. 286, L. 1981.
24. Alcoholism and Drug Dependence.
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Title Cross-References

Institutions and assistance, Art. XII, sec. 3, Mont. Const.

CHAPTER 1

GENERAL ADMINISTRATION OF INSTITUTIONS

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Chapter Cross-References

Institutions and assistance, Art. XII, sec. 3, Mont. Const.

Department of Corrections, Title 53, ch. 1, part 2.

Part 1

General Provisions

53-1-101. Repealed. Sec. 567, Ch. 546, L. 1995.

History: En. Sec. 2, Ch. 199, L. 1965; amd. Sec. 39, Ch. 120, L. 1974; R.C.M. 1947, 80-1402; amd. Sec. 1, Ch. 495, L. 1979; amd. Sec. 1, Ch. 262, L. 1991.

53-1-102. Removal of patients from state custodial institutions or correctional facilities without permission a misdemeanor. (1) A person, other than a parent or one having legal custody of a patient or inmate, who permits or assists a resident patient or inmate of a state custodial institution or correctional facility to leave the institution or facility without permission from the properly authorized member of the staff or proper court order is guilty of a misdemeanor and upon conviction is punishable by imprisonment in a county jail not exceeding 6 months or by a fine not exceeding $500, or both.

(2) This section may not be construed to conflict with laws relative to inmates of a state prison.

History: En. Sec. 1, Ch. 361, L. 1971; R.C.M. 1947, 80-1417; amd. Sec. 18, Ch. 189, L. 1997; amd. Sec. 10, Ch. 491, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 491 in (2) at end substituted "a state prison" for "a Montana prison". Amendment effective April 27, 1999.

Cross-References

Escape, 45-7-306.

53-1-103. Distribution of alcoholic beverages or drugs to patients at state custodial institutions or correctional facilities a misdemeanor. (1) A person who knowingly sells or distributes or attempts to sell or distribute alcoholic beverages or drugs to the resident patients or inmates of a state custodial institution or correctional facility without permission of the medical staff is guilty of a misdemeanor and, upon conviction, is punishable by imprisonment in a county detention facility not exceeding 6 months or by a fine not exceeding $500, or both.

(2) This section may not be construed to conflict with laws relative to inmates of a state prison.

History: En. Sec. 1, Ch. 362, L. 1971; R.C.M. 1947, 80-1418; amd. Sec. 19, Ch. 189, L. 1997; amd. Sec. 11, Ch. 491, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 491 in (1) near end substituted "detention facility" for "jail"; and in (2) at end substituted "state prison" for "Montana prison". Amendment effective April 27, 1999.

Cross-References

Liquor administered to institution inmates, 16-6-309.

53-1-104. Release of arsonist — notification of department of justice. (1) Each of the following institutions, correctional facilities, or other facilities having the charge or custody of a person convicted of arson or of a person acquitted of arson on the ground of mental disease or defect shall give written notification to the department of justice when the person is admitted or released by it:

(a) Montana state hospital;

(b) a state prison;

(c) a Montana youth correctional facility; or

(d) a county or city detention facility.

(2) The notification must disclose:

(a) the name of the person;

(b) where the person is or will be located; and

(c) the type of fire the person was involved in.

History: En. 80-1403.1 by Sec. 1, Ch. 206, L. 1977; R.C.M. 1947, 80-1403.1; amd. Sec. 10, Ch. 361, L. 1983; amd. Sec. 9, Ch. 363, L. 1983; amd. Sec. 9, Ch. 14, Sp. L. June 1986; amd. Sec. 68, Ch. 609, L. 1987; amd. Sec. 8, Ch. 579, L. 1993; amd. Sec. 236, Ch. 42, L. 1997; amd. Sec. 20, Ch. 189, L. 1997; amd. Sec. 12, Ch. 491, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 491 in (1)(b) substituted "a state prison" for "a Montana prison". Amendment effective April 27, 1999.

Cross-References

Department of Justice, Title 2, ch. 15, part 20.

Negligent arson, 45-6-102.

Arson, 45-6-103.

53-1-105. Disposition of contraband in correctional institution. (1) Cash possessed in excess of the amount allowed by the policy of an adult or youth correctional institution or obtained in violation of a policy may be confiscated and deposited in an inmate or resident welfare fund to be used for the intended purpose of that fund.

(2) The department of corrections shall adopt policies for the disposition of other contraband confiscated from inmates or residents in adult or youth correctional institutions. Receipts from the sale of contraband must be deposited in an inmate or resident welfare fund to be used for the intended purpose of that fund.

History: En. Sec. 1, Ch. 325, L. 1985; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 391, Ch. 546, L. 1995.

Cross-References

Youthful offenders, Title 52, ch. 5, part 1.

Powers and duties of department of corrections, 53-1-203.

Adult offenders — Montana State Prison, Title 53, ch. 30, part 1.

53-1-106. Exchange of offenders under treaty. If a treaty in effect between the United States and a foreign country provides for the transfer, by exchange or otherwise, of convicted offenders to the country of which they are citizens or nationals, the governor may, on behalf of the state and subject to the terms of the treaty, authorize the director of the department of corrections to consent to the transfer or exchange of offenders in Montana institutions and take any other action necessary to initiate the participation of this state in the treaty.

History: En. Sec. 1, Ch. 300, L. 1985; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 392, Ch. 546, L. 1995.

Cross-References

Powers and duties of Governor, 2-15-201.

53-1-107. Limits on inmate financial transactions. (1) An inmate of the Montana state prison in Deer Lodge or the women's prison in Billings shall use the prison inmate trust account system administered by the department of corrections to send money out of or receive money in the facility unless the department grants the inmate an exception. If an inmate accumulates a balance in excess of $200 in the inmate's prison inmate trust account, the excess must, consistent with department rules, be forfeited for the payment of restitution or costs of incarceration. The department may charge an inmate a minimum fee, not to exceed $1.60 each month, to administer the inmate's account.

(2) (a) Money forfeited under subsection (1) to the payment of restitution must be paid in the following order:

(i) to the victim until the victim's unreimbursed pecuniary loss is satisfied;

(ii) to the crime victims compensation and assistance account provided for in 53-9-109 until the account is fully reimbursed for compensation to the victim;

(iii) to any other government agency that has compensated the victim for the victim's pecuniary loss;

(iv) to any insurance company that has compensated the victim for the victim's pecuniary loss.

(b) If the inmate's sentence did not provide for the payment of restitution or if there is a balance of money after restitution has been paid under subsection

(2)(a), money forfeited under subsection (1) must be applied to the inmate's costs of incarceration.

(3) The department shall adopt rules establishing criteria for forfeiture of funds under subsection (1). The rules must contain clear guidelines regarding forfeiture that ensure restitution under subsection (2) but that:

(a) do not unreasonably inhibit an inmate's ability to save money for the purchase of tools or other items to further the education of the inmate for purposes of rehabilitation or seeking employment after release from the correctional facility; and

(b) do inhibit any inmate's ability to deal in contraband or illegal acts within or outside the correctional facility.

History: En. Sec. 1, Ch. 316, L. 1997.

53-1-108. Inmate financial disclosure and account monitoring. (1) Upon incarceration at a state prison, an inmate shall:

(a) make full disclosure of all the inmate's accounts in financial institutions to the department of corrections in writing and under oath;

(b) sign a release authorizing any financial institution in which the inmate has an account of any kind to provide the department with copies of records of any transaction in the account during the inmate's term of incarceration in the prison or correctional system. Released copies of records are confidential criminal justice information as defined in 44-5-103.

(c) sign a release authorizing the department to monitor any inmate account in a financial institution.

(2) Failure of an inmate to disclose information under subsection (1)(a) or sign a release under subsection (1)(b) or (1)(c) is an offense under 45-7-302.

History: En. Sec. 2, Ch. 316, L. 1997; amd. Sec. 13, Ch. 491, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 491 in (1) substituted "a state prison" for "the Montana state prison in Deer Lodge or the women's prison in Billings". Amendment effective April 27, 1999.

Part 2

Department of Corrections

Part Cross-References

Department of Corrections — head, 2-15-2301.

Cooperative agreements with district weed boards, 7-22-2151.

Corrections, Title 53, ch. 30.

Private correctional facilities, Title 53, ch. 30, part 6.

53-1-201. Purpose of department of corrections. The department of corrections shall use at maximum efficiency the resources of state government in a coordinated effort to:

(1) develop and maintain comprehensive services and programs in the field of adult and youth corrections; and

(2) provide for the custody, assessment, care, supervision, treatment, education, rehabilitation, and work and skill development of youth alleged to be youth in need of intervention or delinquent youth who are referred or committed to the department.

History: En. Sec. 1, Ch. 199, L. 1965; amd. Sec. 38, Ch. 120, L. 1974; R.C.M. 1947, 80-1401; amd. Sec. 69, Ch. 609, L. 1987; amd. Sec. 4, Ch. 262, L. 1991; amd. Sec. 393, Ch. 546, L. 1995; amd. Sec. 69, Ch. 550, L. 1997.

53-1-202. *(Temporary)* **Department of corrections.** (1) Adult and youth correctional services are included in the department of corrections to carry out the purposes of the department.

(2) Adult corrections services consist of the following correctional facilities or programs:

(a) the prisons listed in 53-30-101;

(b) appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement:

(i) in prerelease centers;

(ii) under intensive supervision;

(iii) under parole or probation pursuant to Title 46, chapter 23, part 2; or

(iv) in other appropriate programs; and

(c) the boot camp authorized by 53-30-403.

(3) Youth correctional services consist of the following correctional facilities or programs to provide for custody, supervision, training, education, and rehabilitation of delinquent youth and youth in need of intervention pursuant to Title 52, chapter 5:

(a) Pine Hills youth correctional facility or other state youth correctional facility; and

(b) any other facility or program that provides custody and services for delinquent youth.

(4) A state institution or facility may not be moved, discontinued, or abandoned without the consent of the legislature.

53-1-202. *(Effective on occurrence of contingency)* **Department of corrections.** (1) Adult and youth correctional services are included in the department of corrections to carry out the purposes of the department.

(2) Adult corrections services consist of the following correctional facilities or programs:

(a) the prisons listed in 53-30-101;

(b) appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement:

(i) in prerelease centers;

(ii) under intensive supervision;

(iii) under parole or probation pursuant to Title 46, chapter 23, part 2; or

(iv) in other appropriate programs;

(c) the boot camp authorized by 53-30-403; and

(d) the forensic unit at Warm Springs.

(3) Youth correctional services consist of the following correctional facilities or programs to provide for custody, supervision, training, education, and rehabilitation of delinquent youth and youth in need of intervention pursuant to Title 52, chapter 5:

(a) Pine Hills youth correctional facility or other state youth correctional facility; and

(b) any other facility or program that provides custody and services for delinquent youth.

(4) A state institution or correctional facility may not be moved, discontinued, or abandoned without the consent of the legislature.

History: En. Sec. 3, Ch. 199, L. 1965; amd. Sec. 1, Ch. 320, L. 1967; amd. Sec. 1, Ch. 280, L. 1969; amd. Sec. 40, Ch. 120, L. 1974; R.C.M. 1947, 80-1403; amd. Sec. 174, Ch. 575, L. 1981; amd. Sec. 1, Ch. 132, L. 1983; amd. Sec. 11, Ch. 361, L. 1983; amd. Sec. 10, Ch. 363, L. 1983; amd. Sec. 2, Ch. 151, L. 1985; amd. Sec. 10, Ch. 14, Sp. L. June 1986; amd. Sec. 70, Ch. 609, L. 1987; amd. Sec. 15, Ch. 683, L. 1989; amd. Sec. 5, Ch. 262, L. 1991; amd. Sec. 1, Ch. 305, L. 1991; amd. Sec. 8, Ch. 651, L. 1991; amd. Sec. 9, Ch. 579, L. 1993; amd. Sec. 1, Ch. 94, L. 1995; amd. Sec. 394, Ch. 546, L. 1995; amd. Sec. 3, Ch. 557, L. 1995; amd. Sec. 237, Ch. 42, L. 1997; amd. Sec. 21, Ch. 189, L. 1997; amd. Sec. 76, Ch. 550, L. 1997; amd. Sec. 14, Ch. 491, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 491 in (2) after "or programs" deleted "to incarcerate and rehabilitate felons pursuant to Title 46, chapter 18"; in (2)(a) substituted "prisons listed in 53-30-101" for "Montana state prison"; deleted former (2)(b) that read: "(b) the Montana women's prison"; inserted (2)(c) regarding boot camp; and made minor changes in style. Amendment effective April 27, 1999.

Effective Dates — Contingency: Section 11, Ch. 557, L. 1995, provided: "(1) [Sections 1, 2, 4 through 10, and this section] are effective on passage and approval. [Approved April 26, 1995.]

(2) [Section 3] [53-1-202] is effective 20 days after the governor, by executive order, declares that the construction of a new forensic unit at the Montana state hospital complex in Warm Springs, Montana, is complete."

53-1-203. Powers and duties of department of corrections. (1) The department of corrections shall:

(a) adopt rules necessary to carry out the purposes of 41-5-123 through 41-5-125, rules necessary for the siting, establishment, and expansion of prerelease centers, and rules for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law. However, rules adopted by the department may not amend or alter the statutory powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants, restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited at any location without community support. The prerelease siting, establishment, and expansion must be subject to, and the rules must include, a reasonable mechanism for a determination of community support or objection to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment, and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.

(b) subject to the functions of the department of administration, lease or purchase lands for use by correctional facilities and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in correctional facilities;

(c) contract with private, nonprofit Montana corporations to establish and maintain prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole eligibility or discharge for release into the community, providing an alternative placement for offenders who have violated parole, and providing a sentencing option for felony offenders pursuant to 46-18-201. The centers shall provide a less restrictive environment than the prison while maintaining adequate security. The centers must be operated in coordination with other department correctional programs. This subsection does not affect the department's authority to operate and maintain prerelease centers.

(d) utilize the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(e) propose programs to the legislature to meet the projected long-range needs of corrections, including programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed in correctional facilities or programs;

(f) encourage the establishment of programs at the local and state level for the rehabilitation and education of felony offenders;

(g) administer all state and federal funds allocated to the department for youth in need of intervention and delinquent youth, as defined in 41-5-103;

(h) collect and disseminate information relating to youth in need of intervention and delinquent youth;

(i) maintain adequate data on placements that it funds in order to keep the legislature properly informed of the specific information, by category, related to youth in need of intervention and delinquent youth in out-of-home care facilities;

(j) provide funding for and place youth who are adjudicated to be delinquent or in need of intervention and who are committed to the department;

(k) administer youth correctional facilities;

(l) provide supervision, care, and control of youth released from a state youth correctional facility; and

(m) use to maximum efficiency the resources of state government in a coordinated effort to:

(i) provide for delinquent youth committed to the department; and

(ii) coordinate and apply the principles of modern correctional administration to the facilities and programs administered by the department.

(2) The department and a private, nonprofit Montana corporation may not enter into a contract under subsection (1)(c) for a period that exceeds 10 years. The provisions of 18-4-313 that limit the term of a contract do not apply to a contract authorized by subsection (1)(c). Prior to entering into a contract for a period of 10 years, the department shall submit the proposed contract to the legislative audit committee. The legislative audit division shall review the contract and make recommendations or comments to the legislative audit committee. The committee may make recommendations or comments to the department. The department shall respond to the committee, accepting or rejecting the committee recommendations or comments prior to entering into the contract.

(3) The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of intervention and delinquent youth in youth correctional facilities.

History: En. Sec. 5, Ch. 199, L. 1965; amd. Sec. 3, Ch. 320, L. 1967; amd. Sec. 33, Ch. 93, L. 1969; amd. Sec. 41, Ch. 120, L. 1974; amd. Sec. 43, Ch. 37, L. 1977; R.C.M. 1947, 80-1405; amd. Sec. 1, Ch. 4, Sp. L. 1982; amd. Sec. 6, Ch. 262, L. 1991; amd. Sec. 8, Ch. 316, L. 1995; amd. Sec. 395, Ch. 546, L. 1995; amd. Sec. 22, Ch. 189, L. 1997; amd. Secs. 5, 16, Ch. 322, L. 1997; amd. Sec. 5, Ch. 455, L. 1997; amd. Sec. 70, Ch. 550, L. 1997.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

General powers and duties of Department of Administration, 18-2-105.

Montana Youth Court Act, Title 41, ch. 5.

General provisions of Board of Pardons and Parole, Title 46, ch. 23, part 1.

Disposition of contraband in correctional institution, 53-1-105.

Rates — per diem costs for residential correctional programs, Title 53, ch. 1, part 5.

Community-based services, Title 53, ch. 20, part 2.

Defendant to bear expense of alternative imprisonments — alcohol-related offenses, 61-8-734.

53-1-204. Responsibility of warden and superintendents of institutions. The warden or superintendents of institutions in the department of corrections are responsible for the immediate management and control of their respective institutions, subject to the general policies and programs established by the department of corrections.

History: En. Sec. 6, Ch. 199, L. 1965; amd. Sec. 42, Ch. 120, L. 1974; R.C.M. 1947, 80-1406; amd. Sec. 396, Ch. 546, L. 1995.

Cross-References

Qualifications of wardens, 53-30-102.

53-1-205. Repealed. Sec. 3, Ch. 495, L. 1979.

History: En. 80-1407.1 by Sec. 43, Ch. 120, L. 1974; R.C.M. 1947, 80-1407.1.

53-1-206. Participation by institutions in research programs. The department of corrections may direct a penal and corrective institution of the state to participate in and cooperate with programs of research and development being conducted and carried on by any units of the Montana university system, by any of the other educational institutions of the state of Montana, or by any foundation or agency of an educational institution in the fields of science, health, education, and natural resources. These programs may include the voluntary participation of the inmates of the institution in testing and experimental work conducted as a part the testing. Any funds received from the authorized programs may be shared with the participating inmates or otherwise held and used for the welfare and rehabilitation of the inmates and may not become a part of the regular budgeted operation of the institution.

History: En. Sec. 1, Ch. 98, L. 1967; amd. Sec. 47, Ch. 120, L. 1974; amd. Sec. 45, Ch. 37, L. 1977; R.C.M. 1947, 80-1413; amd. Sec. 397, Ch. 546, L. 1995.

Cross-References

Research programs — powers of units, 20-25-108.

53-1-207. Authorization of inmate labor for designated construction projects — exemptions. (1) The department of corrections is authorized to use inmate labor for the purpose of construction projects at the Montana state prison that are authorized by the legislature.

(2) The department of administration shall provide for construction of the projects authorized by this section, which are to be built by the lowest responsible bidder, with contract specifications to allow the use of inmate labor. The percentage of inmate labor must be determined prior to the advertising

for bid of the projects through negotiations among the department of corrections, the department of administration, representatives of construction industry employers, and representatives of the building trades.

History: En. Sec. 2, Ch. 513, L. 1997.

Cross-References

Construction contracts, Title 18, ch. 2.

53-1-208. *(Temporary)* **Payment to Powell County.** (1) The department of corrections shall allocate $46,000 each fiscal year from the proprietary enterprise fund established for the operation of the state prison ranch to the Powell County treasurer.

(2) The Powell County treasurer shall distribute the payment in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as property taxes are distributed. *(Terminates June 30, 2001—sec. 6, Ch. 550, L. 1999.)*

History: En. Sec. 1, Ch. 550, L. 1999.

Compiler's Comments

Effective Date: Section 5, Ch. 550, L. 1999, provided that this section is effective July 1, 1999.

Termination: Section 6, Ch. 550, L. 1999, provided: "[This act] terminates June 30, 2001."

Part 3
Institutional Industries

53-1-301. Permitted institutional industries — powers of department. (1) The department of public health and human services may:

(a) establish industries in institutions that will result in the production or manufacture of products and the rendering of services that may be needed by any department or agency of the state or any political subdivision of the state, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of residents in institutions;

(b) contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction;

(c) print catalogs describing goods manufactured or produced by institutions and distribute the catalogs;

(d) fix the sale price for goods produced or manufactured at institutions. Prices may not exceed prices existing in the open market for goods of comparable quality.

(e) require institutions to purchase needed goods from other institutions or from prison industries;

(f) provide for the repair and maintenance of property and equipment of institutions by residents of institutions;

(g) provide for the repair and maintenance at an institution of furniture and equipment of any state agency;

(h) sell manufactured products on the open market; and

(i) pay a resident of an institution from receipts from the sale of products produced or manufactured or services rendered in a program in which the resident is working.

(2) (a) Except as provided for in subsection (2)(b), payment for the performance of work may be based on the following criteria:

(i) knowledge and skill;
(ii) attitude toward authority;
(iii) physical effort;
(iv) responsibility for equipment and materials; and
(v) regard for safety of others.

(b) The maximum rate of pay must be determined by the appropriation established for each program.

History: En. Sec. 10, Ch. 199, L. 1965; amd. Sec. 51, Ch. 120, L. 1974; amd. Sec. 1, Ch. 275, L. 1975; R.C.M. 1947, 80-1501; amd. Sec. 1, Ch. 433, L. 1979; amd. Sec. 1, Ch. 426, L. 1981; amd. Sec. 1, Ch. 530, L. 1985; amd. Sec. 1, Ch. 1, Sp. L. May 1990; amd. Sec. 2, Ch. 471, L. 1993; amd. Sec. 59, Ch. 18, L. 1995; amd. Sec. 402, Ch. 546, L. 1995; amd. Sec. 1, Ch. 315, L. 1997.

Cross-References

State procurement generally, Title 18, ch. 4.

Prison industries training program, 53-30-131 through 53-30-133.

53-1-302. Disposition of receipts from sale of goods. Receipts from the sale of goods produced or manufactured by an institution or correctional facility must be deposited in the appropriate enterprise or internal service fund for the use of the industries program of the institution or facility.

History: En. Sec. 11, Ch. 199, L. 1965; R.C.M. 1947, 80-1502; amd. Sec. 2, Ch. 433, L. 1979; amd. Sec. 2, Ch. 426, L. 1981; amd. Sec. 26, Ch. 281, L. 1983; amd. Sec. 1, Ch. 632, L. 1985; amd. Sec. 1, Ch. 4, Sp. L. January 1992; amd. Sec. 23, Ch. 189, L. 1997.

Cross-References

Deposits, Title 17, ch. 6, part 1.

53-1-303. Prohibited acts. Unless permitted by the department of corrections or the department of public health and human services, arranging for the labor of a resident of an institution is prohibited.

History: En. Sec. 12, Ch. 199, L. 1965; amd. Sec. 1, Ch. 383, L. 1975; R.C.M. 1947, 80-1503; amd. Sec. 3, Ch. 426, L. 1981; amd. Sec. 403, Ch. 546, L. 1995.

Cross-References

Patient labor, 53-21-167.

53-1-304. Supervision of industries program. The industries program must be supervised by the director of the department of public health and human services or the director's designated representative, provided that the administration of the industries program is separate from the administration of any institution where the program may be located.

History: En. Sec. 3, Ch. 433, L. 1979; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 404, Ch. 546, L. 1995; amd. Sec. 2, Ch. 315, L. 1997.

Cross-References

Department of Corrections — head, 2-15-2301.

Part 4

Per Diem Payments for Institutional Care

53-1-401. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "All-inclusive rate" means a fixed charge that is computed on a daily basis or on the basis of another time period for inpatients, that is computed on a per visit basis for outpatients, and that is applicable uniformly to each patient without regard to the extent of the services required by the patient and without regard to a distinction between physician services and hospital services.

(2) "Ancillary charge" means the expense of providing identifiable, direct, resident services, including but not limited to:

(a) physicians' services;
(b) x-ray and laboratory services;
(c) dental services;
(d) speech-language pathology and audiology services;
(e) occupational and physical therapy;
(f) medical supplies;
(g) prescribed drugs; and
(h) specialized medical equipment.

(3) "Care" means the care, treatment, support, maintenance, and other services rendered by the department to a resident.

(4) "Cost of care" means the applicable all-inclusive rate charges or per diem charges and ancillary charges for a resident's care that are determined as provided in this part.

(5) "Department" means the department of public health and human services provided for in 2-15-2201.

(6) "Financially responsible person" means a spouse of a resident, the natural or adoptive parents of a resident under 18 years of age, or a guardian or conservator to the extent of the guardian's or conservator's responsibility for the financial affairs of the person who is a resident under applicable Montana law establishing the duties and limitations of guardianships or conservatorships.

(7) "Full-time equivalent resident load" means the total daily resident count for the fiscal year divided by the number of days in the year.

(8) "Gross daily budgeted cost" means the total cost of operating a facility as budgeted through the legislative appropriation process less the budgeted amount of federal grant revenue for the institution.

(9) "Long-term resident" means a resident in an institution listed in 53-1-402 for a continuous period in excess of 120 days. The absence of a resident from the institution due to a temporary or trial visit may not be counted as interrupting the accrual of the 120 days required to attain the status of a long-term resident.

(10) "Per diem charge" means the gross daily budgeted cost of operating an institution or an individual unit of an institution for the state fiscal year (including but not limited to contracted medical services, depreciation, and associated department costs but excluding the cost of educational programs, ancillary charges, and costs not directly identified with patient care) divided by the full-time equivalent resident load for the previous state fiscal year.

(11) "Resident" means any person who is receiving care from or who is a resident of an institution listed in 53-1-402.

(12) (a) " Third party" means any third-party individual or entity that is or may be liable to pay all or part of the charges for a resident's cost of care,

including but not limited to applicable medicare, medicaid, and personal insurance or other similar health care benefits.

(b) Third party does not include:

(i) a managed care organization administering a mental health managed care program under contract with the department; or

(ii) a financially responsible person.

History: En. Sec. 14, Ch. 199, L. 1965; amd. Sec. 1, Ch. 336, L. 1974; amd. Sec. 2, Ch. 450, L. 1977; R.C.M. 1947, 80-1602; amd. Sec. 1, Ch. 594, L. 1983; amd. Sec. 1, Ch. 283, L. 1989; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 405, Ch. 546, L. 1995; amd. Sec. 4, Ch. 590, L. 1995; amd. Sec. 1, Ch. 190, L. 1997.

53-1-402. Residents and financially responsible persons liable for cost of care. (1) A resident and a financially responsible person are liable to the department for the resident's cost of care as provided in this part. The cost of care includes the applicable per diem and ancillary charges or all-inclusive rate charges for the care of residents in the following institutions:

(a) Montana state hospital;

(b) Montana developmental center;

(c) Montana veterans' home;

(d) eastern Montana veterans' home;

(e) Montana mental health nursing care center;

(f) Eastmont human services center; and

(g) Montana chemical dependency treatment center.

(2) The eastern Montana veterans' home may assess charges on either a per diem and ancillary charge basis or an all-inclusive rate basis if the department contracts with a private vendor to operate the facility as provided for in 10-2-416.

(3) The Montana state hospital and the Montana mental health nursing center may determine the cost of care using an all-inclusive rate or per diem and ancillary charges if the department contracts with a private entity to operate a mental health managed care program.

History: En. Sec. 13, Ch. 199, L. 1965; amd. Sec. 4, Ch. 320, L. 1967; amd. Sec. 1, Ch. 276, L. 1969; amd. Sec. 1, Ch. 191, L. 1971; amd. Sec. 52, Ch. 120, L. 1974; amd. Sec. 1, Ch. 450, L. 1977; R.C.M. 1947, 80-1601; amd. Sec. 2, Ch. 132, L. 1983; amd. Sec. 12, Ch. 361, L. 1983; amd. Sec. 11, Ch. 363, L. 1983; amd. Sec. 3, Ch. 151, L. 1985; amd. Sec. 11, Ch. 14, Sp. L. June 1986; amd. Sec. 2, Ch. 283, L. 1989; amd. Sec. 16, Ch. 683, L. 1989; amd. Sec. 2, Ch. 305, L. 1991; amd. Sec. 10, Ch. 579, L. 1993; amd. Sec. 1, Ch. 35, L. 1995; amd. Sec. 2, Ch. 94, L. 1995; amd. Sec. 5, Ch. 590, L. 1995; amd. Sec. 2, Ch. 190, L. 1997.

Cross-References

Disability insurance — coverage of services at state institutions — may not be excluded, 33-22-112.

53-1-403. Rules. In addition to the specific provisions of this part that require the department to adopt rules, the department may adopt rules to implement this part. All rules adopted by the department under the provisions of this part must be adopted pursuant to the provisions of the Montana Administrative Procedure Act.

History: En. 80-1606 by Sec. 2, Ch. 324, L. 1974; amd. Sec. 6, Ch. 450, L. 1977; R.C.M. 1947, 80-1606; amd. Sec. 3, Ch. 190, L. 1997.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-1-404. Department to compute per diem charge. The per diem charge for the fiscal year must be computed on July 1 of each year by the department. If the budgeted costs of an institution change substantially within the fiscal year, the per diem charge may be adjusted to compensate for those changes.

History: En. Sec. 15, Ch. 199, L. 1965; amd. Sec. 1, Ch. 240, L. 1969; amd. Sec. 53, Ch. 120, L. 1974; amd. Sec. 2, Ch. 336, L. 1974; amd. Sec. 46, Ch. 37, L. 1977; amd. Sec. 3, Ch. 450, L. 1977; R.C.M. 1947, 80-1603(part); amd. Sec. 2, Ch. 594, L. 1983; amd. Sec. 4, Ch. 190, L. 1997.

53-1-405. Monthly payment amount. (1) A resident and a financially responsible person are liable for the resident's cost of care in an amount that the department determines that the resident or financially responsible person is able to pay. The department shall determine ability to pay based upon financial information and documentation obtained by the department through an investigation conducted as provided in 53-1-406.

(2) The department shall adopt rules that establish criteria and procedures for determining ability to pay. The criteria established by rules adopted under this section must address factors relevant to the person's ability to pay, including but not limited to:

(a) the amount of the resident's or financially responsible person's income, including the anticipated receipt of retroactive benefits, such as veteran's benefits or social security benefits;

(b) the amount of the resident's or financially responsible person's assets, including the availability of assets that are liquid or that are able to be readily converted to cash;

(c) the amount of the resident's or financially responsible person's fixed expenses for reasonable and necessary housing, utilities, transportation, medical care, food, and clothing;

(d) the amount of the resident's or financially responsible person's taxes and other mandatory payments, such as social security withholdings, insurance, child support, restitution, and court-ordered payments;

(e) the number of persons dependent upon the resident or financially responsible person for support;

(f) the amount of the resident's or financially responsible person's discretionary income;

(g) the resident's personal needs requirements while in the institution; and

(h) the extent to which requirement of a particular monthly payment or any monthly payment would impose an undue financial burden on the resident or financially responsible person.

(3) The department may determine ability to pay and assess charges up to the full cost of care but may require monthly payments in a lesser amount based upon:

(a) a resident's or financially responsible person's income-producing assets, such as stocks, bonds, certificates of deposit, or other similar assets;

(b) real property of the resident or the resident's spouse if:

(i) the property has been listed or advertised for sale, unless the sale proceeds are or will be used to purchase a home within 18 months or are used for primary residence living expenses; or

(ii) the property is not occupied as the home of the resident, the resident's spouse, or a dependent child or parent of the resident or the resident's spouse and if there is no reasonable expectation that the resident, the resident's spouse, or a dependent child or parent of the resident or the resident's spouse will return to occupy the property as a home; or

(c) the anticipated receipt of retroactive benefits, such as veteran's benefits or social security benefits.

(4) If the department has determined an ability to pay and has assessed charges but has required monthly payments in a lesser amount as provided in subsection (3), the department may bill and collect all or a part of the accumulated difference between the assessed charges and the minimum payment amount:

(a) upon sale or liquidation of the assets or real property;

(b) upon the actual receipt of retroactive benefits, such as veteran's benefits or social security benefits;

(c) upon determination of a current ability to pay; or

(d) from the resident's or financially responsible person's estate as provided in 53-1-412.

(5) The department may not require payment of a monthly amount that would place an undue financial burden on the resident or financially responsible person.

(6) The department shall refund to the resident or financially responsible person any payment made to the department for any month to the extent that the total payments received from the resident, financially responsible person, and third party exceed the resident's cost of care for that month.

(7) The fact that a managed care organization contracting with the department to administer a mental health managed care program is or may be liable to pay or has paid an amount to an institution with respect to the resident does not reduce or otherwise affect the resident's or financially responsible person's obligation to pay for the cost of care as provided in this part.

(8) The department shall provide a written notice and an opportunity for a hearing regarding a department determination of ability to pay to any resident or financially responsible person who is determined able to pay.

(9) In addition to providing the notice required by subsection (8), the department shall bill the resident or financially responsible person monthly for the amount determined in accordance with this section. The bill must state the amount due for the current month, the amount of any payments received during the billing cycle, and the total amount of unpaid costs of care that the department has determined the resident or financially responsible person is able to pay. The bill need not state the current or accrued full cost of care that is or would be payable by a third party.

(10) This section may not be construed to reduce the liability of a third party for the resident's full cost of care as provided in this part.

History: En. Sec. 15, Ch. 199, L. 1965; amd. Sec. 1, Ch. 240, L. 1969; amd. Sec. 53, Ch. 120, L. 1974; amd. Sec. 2, Ch. 336, L. 1974; amd. Sec. 46, Ch. 37, L. 1977; amd. Sec. 3, Ch. 450, L. 1977; R.C.M. 1947, 80-1603(part); amd. Sec. 3, Ch. 594, L. 1983; amd. Sec. 5, Ch. 190, L. 1997.

53-1-406. Investigation of ability to pay. (1) Before determining an ability to pay under 53-1-405, the department shall investigate each resident's and each financially responsible person's ability to pay. For purposes of the investigation, the determination of ability to pay, or any later review or redetermination, the department may require the resident or financially responsible person to complete, sign, and submit financial information and documentation, including financial statements on a form supplied by the department.

(2) Each agency of the state shall provide to the department all reasonable assistance and all requested information and documents necessary for the financial investigation of residents or financially responsible persons. The department of revenue may not provide confidential tax return information to the department without the consent of the taxpayer.

(3) Upon request of the department, the resident or financially responsible person shall make available to the department and shall cooperate with the department in obtaining any financial information and documentation that the department considers essential for the purpose of determining ability to pay and that, under federal law, the department is not prohibited from seeking or obtaining from the resident or financially responsible person. The information and documentation that the department is entitled to receive include but are not limited to:

(a) income statements and verification;

(b) liability statements and verification;

(c) tax returns and related forms, documents, and records, but the department of revenue may not provide confidential tax return information to the department without the consent of the taxpayer;

(d) asset statements and descriptions, including valuation appraisals;

(e) records of a bank or other financial institution, including account balances, loan statements, account ownership information, and transaction records;

(f) expense statements and verification;

(g) financial statements, including existing financial statements and financial statements on forms provided by the department;

(h) releases authorizing the department to obtain information or documents directly from an employer, creditor, federal agency, financial institution, or other person or entity; and

(i) any other information or documentation necessary to the determination.

(4) If a resident or financially responsible person fails to provide or cooperate in obtaining the financial information or documentation requested by the department, the department may make a determination of ability to pay based upon any information or documentation available to the department, including a determination of ability to pay up to the full cost of care. The determination is effective until the requested information and documentation are provided and the department makes a new determination of ability to pay, taking into consideration the additional information and documentation.

(5) In a hearing under 53-1-407, if a hearings examiner determines that information or documentation is relevant and admissible and orders the resident or financially responsible person to produce it and if the resident or financially responsible person fails or refuses to produce that information or documentation, a determination of ability to pay the full cost of care may be

affirmed or payment of the full cost of care ordered, regardless of other information presented.

History: **En. Sec. 15, Ch. 199, L. 1965; amd. Sec. 1, Ch. 240, L. 1969; amd. Sec. 53, Ch. 120, L. 1974; amd. Sec. 2, Ch. 336, L. 1974; amd. Sec. 46, Ch. 37, L. 1977; amd. Sec. 3, Ch. 450, L. 1977; R.C.M. 1947, 80-1603(3); amd. Sec. 6, Ch. 190, L. 1997.**

Cross-References

Contempts, Title 3, ch. 1, part 5.

Subpoenas and witnesses, Title 26, ch. 2.

Obligations of parents for support and education of their children, 40-6-211.

Reciprocal duties of parent and child in maintaining each other, 40-6-214.

Duty of child to support indigent parents, 40-6-301.

53-1-407. Appeal of determination of ability to pay. A resident or financially responsible person aggrieved by a determination of ability to pay under 53-1-405 may request a hearing pursuant to Title 2, chapter 4, part 6.

History: **En. Sec. 15, Ch. 199, L. 1965; amd. Sec. 1, Ch. 240, L. 1969; amd. Sec. 53, Ch. 120, L. 1974; amd. Sec. 2, Ch. 336, L. 1974; amd. Sec. 46, Ch. 37, L. 1977; amd. Sec. 3, Ch. 450, L. 1977; R.C.M. 1947, 80-1603(4); amd. Sec. 2, Ch. 495, L. 1979; amd. Sec. 3, Ch. 283, L. 1989; amd. Sec. 7, Ch. 190, L. 1997.**

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.

53-1-408. Periodic review by department of ability to pay. (1) The department shall review at least annually each determination of ability to pay, and if there has been a significant change in a resident's or financially responsible person's ability to pay, the department shall make a new determination.

(2) In addition to the annual review required by subsection (1), the department shall review a determination of ability to pay upon the request of a resident or financially responsible person if the person provides the department with documentation of a changed circumstance that would substantially affect the amount determined under 53-1-405.

(3) A new determination of ability to pay may not be applied retroactively unless:

(a) the new determination results in a monthly payment amount that is less than the previous monthly payment amount; or

(b) the resident or financially responsible person has misrepresented or failed to provide any financial information or documentation that the person was obligated to provide under 53-1-406 and unless the resident or financially responsible person would have been required to pay a higher monthly amount based upon consideration of the complete and correct information and documentation.

(4) The department may adopt rules to implement the provisions of this section, including but not limited to rules for credit or refund of any overpayment resulting from an assessment retroactively reduced because of a new determination of ability to pay.

History: **En. Sec. 15, Ch. 199, L. 1965; amd. Sec. 1, Ch. 240, L. 1969; amd. Sec. 53, Ch. 120, L. 1974; amd. Sec. 2, Ch. 336, L. 1974; amd. Sec. 46, Ch. 37, L. 1977; amd. Sec. 3, Ch. 450, L. 1977; R.C.M. 1947, 80-1603(5); amd. Sec. 8, Ch. 190, L. 1997.**

53-1-409. Limitations on liability of resident or financially responsible person for cost of care. (1) The resident or financially responsible person is liable only for the cost of care that the department has determined that the person is able to pay and for which the department has billed the resident or financially responsible person. If the amount payable is retroactively reduced because of a new determination of ability to pay, the resident or financially responsible person shall pay only the reduced amount for the period of time covered by the retroactive reduction.

(2) The natural or adoptive parents of a long-term resident may not be required to pay for the resident's cost of care in an amount exceeding the cost of caring for a normal child at home as determined and updated annually by the department based upon the annual cost of raising a child, as estimated by the United States department of agriculture.

(3) The natural or adoptive parents of a long-term resident may not be required to pay for the resident's cost of care for periods after the resident attains 18 years of age.

(4) (a) A resident or financially responsible person is not financially liable for care provided to a resident under any provision of a criminal statute.

(b) Subsection (4)(a) does not apply to a person who is enrolled in the Montana chemical dependency treatment center.

(5) This section may not be construed to reduce the liability of a third party for a resident's full cost of care as provided in this part.

History: (1), (4)En. Sec. 15, Ch. 199, L. 1965; amd. Sec. 1, Ch. 240, L. 1969; amd. Sec. 53, Ch. 120, L. 1974; amd. Sec. 2, Ch. 336, L. 1974; amd. Sec. 46, Ch. 37, L. 1977; amd. Sec. 3, Ch. 450, L. 1977; Sec. 80-1603, R.C.M. 1947; (2), (3)En. 80-1605 by Sec. 1, Ch. 324, L. 1974; amd. Sec. 5, Ch. 450, L. 1977; Sec. 80-1605, R.C.M. 1947; R.C.M. 1947, 80-1603(6), (7), 80-1605; amd. Sec. 27, Ch. 361, L. 1983; amd. Sec. 4, Ch. 594, L. 1983; amd. Sec. 2, Ch. 35, L. 1995; amd. Sec. 9, Ch. 190, L. 1997.

Cross-References

Obligations of parents for support and education of their children, 40-6-211.

Reciprocal duties of parent and child in maintaining each other, 40-6-214.

Duty of child to support indigent parents, 40-6-301.

53-1-410. Nonpayment not grounds for discharge. A resident of an institution listed in 53-1-402 may not be discharged by reason of the nonpayment of the resident's cost of care unless, by certification of a physician consulted by the superintendent of the institution, the discharge is medically advisable.

History: En. Sec. 15, Ch. 199, L. 1965; amd. Sec. 1, Ch. 240, L. 1969; amd. Sec. 53, Ch. 120, L. 1974; amd. Sec. 2, Ch. 336, L. 1974; amd. Sec. 46, Ch. 37, L. 1977; amd. Sec. 3, Ch. 450, L. 1977; R.C.M. 1947, 80-1603(8); amd. Sec. 10, Ch. 190, L. 1997.

53-1-411. Collections from residents and financially responsible persons. (1) If a resident or financially responsible person refuses or fails to pay the amount required under this part, any amount remaining unpaid 30 days after the department mails a written demand for payment may be collected:

(a) by the department in any manner allowed by law for the collection of debts; or

(b) by the department of administration in the manner set forth in Title 17, chapter 4, for the collection of debts owing to the state or by a civil suit brought by the department of administration in the name of the state.

(2) A resident's death or discharge from an institution does not reduce or eliminate the obligation of any person to pay an amount required under this part.

History: En. Sec. 16, Ch. 199, L. 1965; amd. Sec. 4, Ch. 450, L. 1977; R.C.M. 1947, 80-1604(1); amd. Sec. 3, Ch. 35, L. 1995; amd. Sec. 7, Ch. 589, L. 1995; amd. Sec. 11, Ch. 190, L. 1997.

53-1-412. Collections from estates. (1) The department has a claim against the estate of a resident and against the estate of a financially responsible person for the amounts that the department determined that the resident or financially responsible person was able to pay under 53-1-405, less any amounts actually paid by the resident, a financially responsible person, or a third party.

(2) The fact that a managed care organization contracting with the department to administer a mental health managed care program is or may be liable to pay or has paid an amount to an institution with respect to the resident does not reduce or otherwise affect the estate's obligation to pay for the cost of care as provided in this part.

(3) Except as provided in subsection (4), the department's claim under this section is enforceable against an estate after the death of a resident or financially responsible person. The department's claim is timely if presented within the time specified in the published notice to creditors in the probate proceeding.

(4) The department's claim under subsection (1) may be enforced only to the extent that enforcement does not deprive a surviving spouse or dependent child or parent of the resident or financially responsible person of:

(a) an amount necessary for reasonable living expenses or educational expenses; or

(b) real estate while it is occupied as a home by the surviving spouse or dependent child or parent of the resident or financially responsible person.

History: En. Sec. 16, Ch. 199, L. 1965; amd. Sec. 4, Ch. 450, L. 1977; R.C.M. 1947, 80-1604(2); amd. Sec. 12, Ch. 190, L. 1997.

Cross-References

Creditors' claims against estate, Title 72, ch. 3, part 8.

53-1-413. Deposit of payments and collections. (1) Except as provided in 90-7-220, 90-7-221, and this section, the department shall deposit payments and collections of charges for a resident's cost of care in the state treasury to the credit of the general fund.

(2) Payments and collections for services provided to residents of the Montana veterans' home must be deposited in the special revenue account for the benefit of the home. Payments and collections for services provided to residents of the Montana chemical dependency treatment center must be deposited in the state special revenue account for the facility.

(3) Subject to 90-7-221, payments from a managed care organization that is contracting with the department to administer a mental health managed care program for services provided by the Montana state hospital and the Montana mental health nursing care center must be deposited in the state special revenue account, subject to appropriation by the legislature for the benefit of those institutions.

(4) Medicaid payments for services provided by the Montana state hospital and the Montana mental health nursing care center must be deposited in the

federal special revenue fund and are subject to appropriation for the benefit of the mental health managed care program.

History: En. Sec. 16, Ch. 199, L. 1965; amd. Sec. 4, Ch. 450, L. 1977; R.C.M. 1947, 80-1604(3); amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 27, Ch. 361, L. 1983; amd. Sec. 5, Ch. 594, L. 1983; amd. Sec. 4, Ch. 819, L. 1991; amd. Sec. 4, Ch. 35, L. 1995; amd. Sec. 6, Ch. 94, L. 1995; amd. Sec. 4, Ch. 557, L. 1995; amd. Sec. 6, Ch. 590, L. 1995; amd. Sec. 13, Ch. 190, L. 1997; amd. Sec. 4, Ch. 577, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 577 inserted (4) regarding deposit and appropriation of certain medicaid payments. Amendment effective May 6, 1999.

Cross-References

Fund structure, 17-2-102.

53-1-414. Automatic assignment of resident's resources from third party. (1) Upon the provision of care to a resident, the resident is considered to have assigned to the department all third-party payments, benefits, and resources applicable to the resident's care.

(2) The department is entitled to all third-party payments, benefits, and resources assigned under this section upon demand and the submission of supporting documentation from the department to the third party. The department is entitled to collect from the third party the full amount payable by the third party, up to the resident's full cost of care. Collection is not limited to the amount that the resident or financially responsible person has been determined able to pay under 53-1-405.

(3) The fact that a managed care organization contracting with the department to administer a mental health managed care program is or may be liable to pay or has paid an amount to an institution with respect to the resident does not reduce or otherwise affect the third party's obligation to pay for the cost of care as provided in this part.

(4) The department may assign its rights under this section to a managed care organization contracting with the department to administer a mental health managed care program.

(5) If a third party that has been notified of the department's or managed care organization's claim under this section pays benefits, resources, or other amounts to a resident, financially responsible person, or another person or entity without satisfying the department's or managed care organization's claim, the third party is liable to the department or to the managed care organization for the amount that the department or managed care organization was entitled to receive under this part.

History: En. Sec. 14, Ch. 190, L. 1997.

Part 5

Per Diem Payments for Residential Correctional Programs

53-1-501. Rates for residential community correctional program board, room, and services charged by the department of corrections. (1) The department of corrections shall establish per diem rates for room, board, and services for persons placed in or committed to a community correctional program operated by the department of corrections. The department of corrections may adopt rules allowing it to order part of a person's employment income to be used to pay restitution, fines, and child or spousal support.

(2) The department of corrections shall prescribe rules and procedures for the establishment of rates and charges to residents in any community correctional program that is under contract with the department of corrections and that provides room, board, or services or any combination of room, board, and services to residents of those facilities or programs. The amount assessed by these programs must be subject to the resident's ability to pay, based on the rates established as the basis for assessed charges, and subject to approval by the department of corrections.

History: En. Sec. 1, Ch. 517, L. 1979; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 240, L. 1993; amd. Sec. 406, Ch. 546, L. 1995.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Powers and duties of Department of Corrections — prerelease centers, 53-1-203.

Community corrections, Title 53, ch. 30, part 3.

Defendant to bear expense of alternative imprisonment — alcohol-related offenses, 61-8-734.

53-1-502. Rates for board, room, and ancillary services charged to correctional facility inmates. (1) The department of corrections may establish and charge reasonable rates for board, room, and ancillary services as described in 53-1-401 for persons incarcerated in an institutional correctional facility.

(2) The department of corrections may prescribe rules that establish criteria and a procedure for determining ability to pay. The department of corrections may not make an assessment that would place an undue financial burden on the person.

History: En. Sec. 11, Ch. 579, L. 1993; amd. Sec. 407, Ch. 546, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 6

Department of Public Health and Human Services

53-1-601. Purpose of department of public health and human services. The department of public health and human services shall use to maximum efficiency the resources of state government in a coordinated effort to:

(1) develop and maintain comprehensive services and programs in the fields of:

(a) mental health; and

(b) chemical dependency;

(2) provide, according to the requirements of Title 53, chapter 20, inpatient institutional care for persons with developmental disabilities who require institutional care; and

(3) provide nursing home care for honorably discharged veterans as provided by law.

History: En. Sec. 398, Ch. 546, L. 1995.

Cross-References

Department of Public Health and Human Services, 2-15-2201.

Montana veterans' homes, Title 10, ch. 2, part 4.

Developmental disabilities, Title 53, ch. 20.

Mentally ill, Title 53, ch. 21.

Alcoholism and drug dependence, Title 53, ch. 24.

53-1-602. Department of public health and human services. (1) The following components are in the department of public health and human services to carry out the purposes of the department:

(a) mental health services, consisting of the following institutional components for care and treatment of the mentally ill pursuant to Title 53, chapter 21:

(i) the Montana state hospital;

(ii) the Montana mental health nursing care center; and

(iii) a community services component, consisting of appropriate services for the care and treatment of the mentally ill pursuant to Title 53, chapter 21, part 2;

(b) chemical dependency services, consisting of appropriate detoxification, inpatient, intensive outpatient, outpatient, prevention, education, and other necessary chemical dependency services pursuant to Title 53, chapter 24;

(c) institutional and residential components of the developmental disabilities system for those persons with developmental disabilities who require institutional or residential care according to Title 53, chapter 20, which components consist of:

(i) the Montana developmental center; and

(ii) the Eastmont human services center; and

(d) the veterans' nursing homes for the nursing home and domiciliary care of honorably discharged veterans as provided by law, consisting of:

(i) the Montana veterans' home; and

(ii) the eastern Montana veterans' home at Glendive.

(2) A state institution may not be moved, discontinued, or abandoned without the consent of the legislature.

History: En. Sec. 399, Ch. 546, L. 1995; amd. sec. 6, Ch. 94, L. 1995; amd. sec. 21, Ch. 255, L. 1995.

Cross-References

Montana veterans' homes, Title 10, ch. 2, part 4.

Montana Developmental Center and Eastmont Human Services Center, Title 53, ch. 20, part 5.

Community-based nursing homes — powers of Department of Public Health and Human Services, 53-21-402.

Location and function of Montana Mental Health Nursing Care Center, 53-21-411.

Montana State Hospital, Title 53, ch. 21, part 6.

53-1-603. Powers and duties of department of public health and human services. The department of public health and human services shall:

(1) adopt rules for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law. However, rules adopted by the department may not amend or alter the statutory powers and duties of the board of pardons and parole.

(2) subject to the functions of the department of administration, lease or purchase lands for use by institutions and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into

consideration the needs of all institutions for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in the institutions;

(3) use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(4) propose programs to the legislature to meet the projected long-range needs of institutions, including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions; and

(5) encourage the establishment of programs at the local level for the prevention and rehabilitation of disabilities as they relate to mental illness and chemical dependency.

History: En. Sec. 400, Ch. 546, L. 1995.

53-1-604. Responsibility of superintendents of institutions. The superintendents of institutions in the department of public health and human services are responsible for the immediate management and control of their respective institutions, subject to the general policies and programs established by the department.

History: En. Sec. 401, Ch. 546, L. 1995.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Probation, parole, and clemency, Title 46, ch. 23.

CHAPTER 2

ADMINISTRATION OF PUBLIC ASSISTANCE

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Chapter Cross-References

Provision of economic assistance to misfortunate, Art. XII, sec. 3(3), Mont. Const.

Part 1
General Provisions

53-2-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22.

(2) "Needy person" is one who is eligible for public assistance under the laws of this state.

(3) "Protective services" means services to children and adults to be provided by the department as permitted by Titles 41 and 53.

(4) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance.

History: (1), (2)En. 71-201.1 by Sec. 19, Ch. 121, L. 1974; Sec. 71-201.1, R.C.M. 1947; (3), (4)En. Sec. 3, Ch. 180, L. 1953; amd. Sec. 1, Ch. 98, L. 1973; amd. Sec. 2, Ch. 379, L. 1977; Sec. 71-235, R.C.M. 1947; (5)En. Subd. (h), Sec. 7, Part 1, Ch. 82, L. 1937; amd. Sec. 3, Ch. 129, L. 1939; amd. Sec. 1, Ch. 219, L. 1947; amd. Sec. 3, Ch. 199, L. 1951; amd. Sec. 1, Ch. 141, L. 1953; amd. Sec. 12, Ch. 212, L. 1965; amd. Sec. 17, Ch. 325, L. 1967; amd. Sec. 4, Ch. 261, L. 1971; amd. Sec. 14, Ch. 37, L. 1977; Sec. 71-211, R.C.M. 1947; R.C.M. 1947, 71-201.1, 71-211(part), 71-235(2); amd. Sec. 71, Ch. 609, L. 1987; amd. Sec. 1, Ch. 266, L. 1989; amd. Sec. 408, Ch. 546, L. 1995.

53-2-102. State treasurer to receive funds. The treasurer of the state of Montana is hereby designated as the appropriate fiscal officer of the state to receive federal funds. All money for public assistance purposes appropriated by the legislature, received from the United States government, or received from any other source shall be paid into the state treasury to the credit of the department.

History: En. Sec. 1, Part 8, Ch. 82, L. 1937; amd. Sec. 210, Ch. 147, L. 1963; amd. Sec. 49, Ch. 121, L. 1974; amd. Sec. 36, Ch. 37, L. 1977; R.C.M. 1947, 71-901.

Cross-References

General fiscal duties of State Treasurer, 17-1-111.

53-2-103. Records and reports. (1) Each county department shall keep such records and make such reports and in such detail as the department may from time to time require and shall transmit to the department upon its request copies of applications and any or all other records pertaining to any case.

(2) The department is hereby authorized and directed to keep such records in such form and containing such information as the federal social security board may from time to time require and comply with such provisions as the federal board may from time to time find necessary to assure the correctness and verification of such reports.

History: En. Sec. 20, Part 1, Ch. 82, L. 1937; amd. Sec. 10, Ch. 129, L. 1939; R.C.M. 1947, 71-231.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records generally, Title 2, ch. 6, part 1.

County departments of public welfare, Title 53, ch. 2, part 3.

53-2-104. Audit of public assistance records. All applications, information, and records concerning any applicant or recipient of assistance or services under this title are subject to audit for legislative oversight or determination of public assistance fraud.

History: En. 71-231.4 by Sec. 1, Ch. 425, L. 1977; R.C.M. 1947, 71-231.4; amd. Sec. 1, Ch. 38, L. 1979.

Cross-References

Information from state agencies, 5-13-309.

Confidentiality of tax records — information available concerning applicants for public assistance, 15-30-303.

53-2-105. Misuse of public assistance information unlawful. Except as provided in 53-2-211, it is unlawful for a person, body, association, firm, corporation, or other agency to solicit, disclose, receive, or make use of or to authorize, knowingly permit, participate in, or acquiesce in the use of lists or names for commercial or political purposes of any nature or for any purpose not directly connected with the administration of public assistance. However, the department may, to the extent permitted by federal law, disclose public assistance information to an agency of the state or to any other organization if the information is used solely for purposes directly connected with the administration of a program or purpose of the agency.

History: En. Sec. 2, Ch. 179, L. 1953; R.C.M. 1947, 71-231.2; amd. Sec. 2, Ch. 410, L. 1993; amd. Sec. 15, Ch. 491, L. 1995.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Confidentiality of tax records — information available concerning applicants for public assistance, 15-30-303.

53-2-106. Penalty for misuse of public assistance information. Any person, body, association, corporation, firm, or other agency who shall willfully or knowingly violate any provision of 53-2-105 shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $25 or more than $1,000, to which may be added imprisonment in the county jail for any determinate period not to exceed 60 days. If the violation is by other than an individual, the imprisonment may be adjusted against any officer, agent, employee, servant, or other person of the association, corporation, firm, or other agency who committed or participated in such violation and is found guilty thereof.

History: En. Sec. 3, Ch. 179, L. 1953; R.C.M. 1947, 71-231.3.

Cross-References

Confidentiality of tax records — information available concerning applicants for public assistance, 15-30-303.

53-2-107. Fraudulent obtaining of public assistance treated as theft. Whoever knowingly obtains by means of a willfully false statement, representation, or impersonation or other fraudulent device public assistance to which he is not entitled is guilty of theft as provided in 45-6-301.

History: En. Sec. 15, Part 1, Ch. 82, L. 1937; amd. Sec. 21, Ch. 37, L. 1977; amd. Sec. 1, Ch. 273, L. 1977; R.C.M. 1947, 71-226.

Cross-References

Fraud, 28-2-404 through 28-2-406.

Liability for acts committed by or for another, Title 45, ch. 2, part 3.

Conspiracy, 45-4-102.

Crime of unauthorized acquisition or transfer of food stamps, 45-6-312.

Perjury and other falsification in official matters, Title 45, ch. 7, part 2.

53-2-108. Overpayment of assistance — civil penalty when fraud. (1) If, due to department or recipient error, a recipient receives public assistance for which the recipient is not eligible, the portion of payment that the recipient is not entitled to receive may be returned at the discretion of the department.

(2) If a person obtains any part of an assistance payment through fraudulent means as specified in 53-2-107, 125% of the amount of assistance to which the person was not entitled must be repaid and, until fully paid, is a debt due the state.

History: En. Sec. 2, Ch. 257, L. 1979; amd. Sec. 4, Ch. 486, L. 1997.

53-2-109. Recipients to report changes in factors affecting eligibility. Recipients of public assistance shall notify the department of any change or anticipated change in income, resources, household composition, or other factor that may affect eligibility for public assistance or the benefit amount within the period of time specified by the department by rule. Failure of the department to verify information provided by the recipient does not absolve the recipient from the obligation to provide accurate information to the department.

History: En. Sec. 1, Ch. 257, L. 1979; amd. Sec. 5, Ch. 486, L. 1997.

53-2-110. Payment of debts to department. If money is due and owing the department, a payment due under Title 40, chapter 5, part 2 or 4, or under this chapter that is accompanied by or bears any notation by the debtor that the payment represents payment in full is not full payment, notwithstanding the department's acceptance of the payment, unless there is additional written agreement, signed by the department, that the payment is payment in full.

History: En. Sec. 26, Ch. 631, L. 1993.

Part 2

Department of Public Health and Human Services

53-2-201. Powers and duties of department. (1) The department shall:

(a) administer and supervise public assistance, including the provision of food stamps, food commodities, FAIM financial assistance, as defined in 53-2-902, energy assistance, weatherization, vocational rehabilitation, services for persons with severe disabilities, developmental disability services, medical care payments in behalf of recipients of public assistance, employment and training services for recipients of public assistance, and other programs as necessary to strengthen and preserve families;

(b) give consultant service to private institutions providing care for adults who are needy, indigent, or dependent or who have disabilities;

(c) cooperate with other state agencies and develop provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions, and vocational guidance and training of the blind;

(d) provide services in respect to organization and supervise county departments of public welfare and county boards of public welfare in the administration of public assistance functions and for efficiency and economy;

(e) assist and cooperate with other state and federal departments, bureaus, agencies, and institutions, when requested, by performing services in conformity with public assistance purposes;

(f) administer all state and federal funds allocated to the department for public assistance and do all things necessary, in conformity with federal and state law, for the proper fulfillment of public assistance purposes;

(g) make rules governing payment for services and supplies provided to recipients of public assistance; and

(h) adopt rules regarding assignment of monetary and medical support upon application for FAIM financial assistance, as defined in 53-2-902, and related medical assistance.

(2) The department may:

(a) purchase, exchange, condemn, or receive by gift either real or personal property that is necessary to carry out its public assistance functions. Title to property obtained under this subsection must be taken in the name of the state of Montana for the use and benefit of the department.

(b) contract with the federal government to carry out its public assistance functions. The department may do all things necessary in order to avail itself of federal aid and assistance.

(c) make rules, consistent with state and federal law, establishing the amount, scope, and duration of services to be provided to recipients of public assistance.

History: En. Subd. (a) to (g), Sec. 7, Part 1, Ch. 82, L. 1937; amd. Sec. 2, Ch. 199, L. 1951; amd. Sec. 1, Ch. 72, L. 1957; amd. Sec. 20, Ch. 121, L. 1974; amd. Sec. 13, Ch. 37, L. 1977; R.C.M. 1947, 71-210; amd. Sec. 1, Ch. 199, L. 1979; amd. Sec. 1, Ch. 511, L. 1981; amd. Sec. 1, Ch. 465, L. 1983; amd. Sec. 72, Ch. 609, L. 1987; amd. Sec. 10, Ch. 561, L. 1993; amd. Sec. 51, Ch. 472, L. 1997; amd. Sec. 6, Ch. 486, L. 1997.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Procurement generally, Title 18, ch. 4.

Policy regarding child abuse, neglect, and dependency, 41-3-101.

Responsibility of providing child protective services, 41-3-302.

Powers and duties related to youth care facilities, 41-3-1102.

One-step licensing — inspection by other Department, Title 50, ch. 8.

Children's services, Title 52, ch. 2.

Community-based long-term care facilities — powers and duties of Department, 53-6-402.

53-2-202. Attorney general to act as legal adviser to department. The attorney general of the state shall act as legal adviser to the department, shall perform such legal services as may be required, and may employ such other and additional counsel as may be necessary for this purpose and fix the compensation therefor.

History: En. Sec. 4, Part 1, Ch. 82, L. 1937; amd. Sec. 49, Ch. 121, L. 1974; amd. Sec. 12, Ch. 37, L. 1977; R.C.M. 1947, 71-207; amd. Sec. 2, Ch. 38, L. 1979.

Cross-References

Attorney General, Title 2, ch. 15, part 5.

53-2-203. Department to maintain merit system and supervise public assistance personnel. The department shall:

(1) maintain a merit system pertaining to qualifications for appointment, terms of office, annual merit rating, releases, promotions, and salary schedules for all public assistance personnel; personnel standards must conform as far as possible with general standards established or required by the federal government;

(2) have examinations held from time to time throughout the state to establish and furnish to county departments lists, in order of merit, of persons eligible for appointment;

(3) develop policies relating to educational leave of employees and to staff development needs;

(4) supervise the appointment, dismissal, and entire status of the public assistance personnel attached to county boards in accordance with the merit system.

History: En. 71-210.1 by Sec. 21, Ch. 121, L. 1974; R.C.M. 1947, 71-210.1; amd. Sec. 11, Ch. 561, L. 1993.

Cross-References

Residence — rules for determining, 1-1-215.

State employee classification, compensation, and benefits, Title 2, ch. 18.

53-2-204. Renumbered 52-1-104. Sec. 114, Ch. 609, L. 1987.

53-2-205. Department authorized to establish and collect social services fees. (1) The department is authorized to establish and collect fees for social services furnished which are authorized pursuant to Title XX of the Social Security Act, Public Law 93-647. Such fees shall be based on a schedule determined by the department.

(2) The state share of fees provided by subsection (1) shall be paid to the state treasurer for the credit of the state special revenue fund for the use of the department in providing social services.

History: En. 71-210.4, 71-210.5 by Secs. 1, 2, Ch. 206, L. 1975; R.C.M. 1947, 71-210.4, 71-210.5; amd. Sec. 3, Ch. 38, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Fund structure, 17-2-102.

53-2-206. Department to act as agent of federal government. The department shall act as the agent of the federal government in public assistance matters of mutual concern in conformity with this title and the federal Social

Security Act and in the administration of any federal funds granted to the state to aid in the purposes and functions of the department.

History: En. Subd. (h), Sec. 7, Part 1, Ch. 82, L. 1937; amd. Sec. 3, Ch. 129, L. 1939; amd. Sec. 1, Ch. 219, L. 1947; amd. Sec. 3, Ch. 199, L. 1951; amd. Sec. 1, Ch. 141, L. 1953; amd. Sec. 12, Ch. 212, L. 1965; amd. Sec. 17, Ch. 325, L. 1967; amd. Sec. 4, Ch. 261, L. 1971; amd. Sec. 14, Ch. 37, L. 1977; R.C.M. 1947, 71-211(1).

Cross-References

Agency, Title 28, ch. 10.

53-2-207. Power of department in administering state and federal funds. In administering or supervising any state or federal funds appropriated or made available to the department for public assistance purposes, the department has the authority to:

(1) require the county to bear the proportion of the total of local public assistance as is fixed by law relating to the assistance;

(2) make use of all legal processes to enforce the standards prescribed for public assistance purposes by the department; and

(3) require that each part of the public assistance laws be in effect in all counties of the state.

History: En. Sec. 8, Part 1, Ch. 82, L. 1937; amd. Sec. 15, Ch. 37, L. 1977; R.C.M. 1947, 71-212; amd. Sec. 12, Ch. 561, L. 1993.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-2-208 through 53-2-210 reserved.

53-2-211. Department to share eligibility data. (1) The department shall make available to the unemployment compensation program of the department of labor and industry all information contained in its files and records pertaining to eligibility of persons for medicaid, FAIM financial assistance, as defined in 53-2-902, and food stamps. The information made available must include information on the amount and source of an applicant's income. The information received from the department must be used by the department of labor and industry for the purpose of determining fraud, abuse, or eligibility for benefits under the unemployment compensation program of the state and for no other purpose.

(2) The department shall make available to the unemployment compensation and the workers' compensation programs of the department of labor and industry all information contained in its files and records pertaining to eligibility of persons for low-income energy assistance, and weatherization. The information made available must include information on the amount and source of an applicant's income. The information received from the department must be used by the department of labor and industry for the purpose of determining fraud, abuse, or eligibility for benefits under the unemployment compensation and workers' compensation programs of the state and for no other purpose.

(3) (a) Subject to federal restrictions, the department may request information from the department of labor and industry pertaining to unemployment, workers' compensation, and occupational disease benefits. If the department of labor and industry discovers evidence relating to fraud or abuse for unemployment, workers' compensation, or occupational benefits, the

department of labor and industry may request information from the department of revenue pertaining to income as provided in 15-30-303(8)(c).

(b) The information must be used by the department for the purpose of determining fraud, abuse, or eligibility for benefits.

(4) The department may, to the extent permitted by federal law, make available to an agency of the state or to any other organization information contained in its files and records pertaining to the eligibility of persons for medicaid, FAIM financial assistance, as defined in 53-2-902, food stamps, low-income energy assistance, weatherization, or other public assistance. The information may be disclosed only for purposes directly connected with the administration of a program or purpose of the agency and may not be used by the agency for any other purpose.

History: En. Sec. 1, Ch. 410, L. 1993; amd. Sec. 16, Ch. 491, L. 1995; amd. Sec. 7, Ch. 486, L. 1997.

Cross-References

Unemployment insurance, Title 39, ch.51.

Workers' compensation, Title 39, ch.71.

Occupational disease, Title 39, ch. 72.

Part 3

County Departments of Public Welfare

Part Cross-References

County boarding homes for the aged, Title 7, ch. 34, part 23.

State assumption of county public assistance programs, Title 53, ch. 2, part 8.

53-2-301. County departments to be established. There shall be established in each county of the state, except in a county that has transferred its public assistance and protective services responsibilities to the state under the provisions of part 8 of this chapter, a county department of public welfare, which shall consist of a county board of public welfare and such staff personnel as may be necessary for the efficient performance of the public assistance activities of the county. If conditions warrant and if two or more county boards enter into an agreement, two or more counties may combine into one administrative unit and use the same staff personnel throughout the administrative unit.

History: En. Subd. (a), Sec. 9, Part 1, Ch. 82, L. 1937; amd. Sec. 16, Ch. 37, L. 1977; R.C.M. 1947, 71-213; amd. Sec. 9, Ch. 651, L. 1983; amd. Sec. 73, Ch. 609, L. 1987.

53-2-302. County commissioners ex officio county welfare board. Except in a county that has transferred its public assistance and protective services responsibilities to the state under part 8 of this chapter, the board of county commissioners shall be the ex officio county welfare board and is hereby authorized to devote such additional time for public assistance matters as may be found necessary. The members of the county welfare board shall receive the same compensation for their services and the same mileage when acting as the county board of public welfare as they receive when acting as the board of county commissioners and shall be limited as to meetings as now provided by law, and the compensation and mileage of the members of the board shall be paid from county funds. They may transact business as a board of county commissioners and as a county welfare board on the same day, and in such cases they shall be paid as a board of county commissioners but may not receive compensation for more than 1 day's work for all services performed on the same calendar day.

History: En. Subd. (b), Sec. 9, Part 1, Ch. 82, L. 1937; amd. Sec. 4, Ch. 129, L. 1939; amd. Sec. 17, Ch. 37, L. 1977; R.C.M. 1947, 71-214; amd. Sec. 10, Ch. 651, L. 1983; amd. Sec. 74, Ch. 609, L. 1987.

Cross-References

County Commissioners, Title 7, ch. 4, part 21.

53-2-303. County attorney and clerk — ex officio duties. The county attorney is, ex officio, the legal adviser to the county welfare board and shall render legal services that the county or department of public health and human services may require. The county clerk and recorder is, ex officio, the secretary and clerk of the county welfare board.

History: En. Subd. (c), Sec. 9, Part 1, Ch. 82, L. 1937; R.C.M. 1947, 71-215; amd. Sec. 62, Ch. 83, L. 1989; amd. Sec. 409, Ch. 546, L. 1995.

Cross-References

Office of County Clerk, Title 7, ch. 4, part 26.

Office of County Attorney, Title 7, ch. 4, part 27.

53-2-304. *(Temporary)* **Staff personnel of county department.** (1) Each county board shall select and appoint from a list of qualified persons furnished by the department staff personnel that are necessary. The staff personnel in each county must consist of at least one qualified staff worker or investigator and clerks and stenographers that may be necessary. If conditions warrant, the county board, with the approval of the department, may appoint some fully qualified person listed by the department as supervisor of its staff personnel. The staff personnel of each county department are directly responsible to the county board, but the department of public health and human services may supervise the county employees in respect to the efficient and proper performance of their duties. The county board of public welfare may not dismiss any member of the staff personnel without the approval of the department. The department may request the county board to dismiss any member of the staff personnel for inefficiency, incompetence, or similar cause. The final authority for dismissal is the county board. In counties where the department has assumed the administration of welfare duties, the final authority for dismissal is the director of the department.

(2) The department shall pay from state public assistance funds the salaries of public assistance staff personnel attached to a county board. The department shall also pay the travel expenses of those personnel, as provided in 2-18-501 through 2-18-503, when those personnel are away from the county seat in the performance of their duties. However, the county board shall reimburse the department from county poor funds for those salaries, travel expenses, and indirect costs and for the department's administrative costs allocated by the department to the county for the administration of county welfare programs, as follows:

(a) The county board shall reimburse the department 50% of all salaries, travel expenses, and allocated direct and indirect administrative costs attributable to cash assistance and emergency assistance programs created pursuant to Title 53, chapter 4. However, a county is not required to reimburse the department more for the salaries, travel expenses, indirect costs, and allocated administrative costs for 1 state fiscal year than the dollar amount that the county paid as its share of cash assistance and emergency assistance programs in 1996.

(b) The county board shall reimburse the department the full amount of salaries, travel expenses, and allocated direct and indirect administrative costs attributable to any public assistance program other than the cash assistance and emergency assistance programs created pursuant to Title 53, chapter 4, not reimbursed to the department by the federal government.

(3) All administrative costs of the county department of public welfare other than the costs described in subsections (2)(a) and (2)(b) must be paid from county poor funds.

(4) On or before the 20th day of the month following the month for which the payments to the public assistance staff personnel of the county were made, the department shall present to the county department of public welfare a claim for the required reimbursements. The county board shall make reimbursements within 20 days after the presentation of the claim, and the department of public health and human services shall credit all reimbursements to its account for administrative costs.

(5) If a county has transferred its public assistance and protective services responsibilities to the state under part 8 of this chapter, the department shall select, appoint, and supervise all necessary public assistance and protective services personnel, including if necessary a supervisor of staff personnel. All personnel are directly responsible to the department. *(Terminates June 30, 2001—sec. 6, Ch. 341, L. 1999.)*

53-2-304. *(Effective July 1, 2001)* **Staff personnel of county department.** (1) Each county board shall select and appoint from a list of qualified persons furnished by the department of public health and human services staff personnel that are necessary. The staff personnel in each county must consist of at least one qualified staff worker or investigator and clerks and stenographers that may be necessary. If conditions warrant, the county board, with the approval of the department of public health and human services, may appoint some fully qualified person listed by the department as supervisor of its staff personnel. The staff personnel of each county department are directly responsible to the county board, but the department of public health and human services may supervise the county employees in respect to the efficient and proper performance of their duties. The county board of public welfare may not dismiss any member of the staff personnel without the approval of the department of public health and human services. The department may request the county board to dismiss any member of the staff personnel for inefficiency, incompetence, or similar cause. The final authority for dismissal is the county board. In counties where the department has assumed the administration of welfare duties, the final authority for dismissal is the director of the department.

(2) Public assistance staff personnel attached to the county board must be paid from state public assistance funds both their salaries and their travel expenses as provided for in 2-18-501 through 2-18-503 when away from the county seat in the performance of their duties, but the county board of public welfare shall reimburse the department of public health and human services

from county poor funds the full amount of the salaries and travel expenses not reimbursed to the department by the federal government and the full amount of the department's administrative costs that are allocated by the department to the county for the administration of county welfare programs and not reimbursed to the department by the federal government. Under circumstances prescribed by the department of public health and human services, the reimbursement by the county board of public welfare may be less than the county share as prescribed in this subsection. All other administrative costs of the county department must be paid from county poor funds.

(3) On or before the 20th day of the month following the month for which the payments to the public assistance staff personnel of the county were made, the department of public health and human services shall present to the county department of public welfare a claim for the required reimbursements. The county board shall make reimbursements within 20 days after the presentation of the claim, and the department of public health and human services shall credit all reimbursements to its account for administrative costs.

(4) If a county has transferred its public assistance and protective services responsibilities to the state under part 8 of this chapter, the department shall select, appoint, and supervise all necessary public assistance and protective services personnel, including if necessary a supervisor of staff personnel. All personnel are directly responsible to the department.

History: En. Subd. (b), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 5, Ch. 129, L. 1939; amd. Sec. 1, Ch. 44, L. 1963; amd. Sec. 50, Ch. 121, L. 1974; amd. Sec. 48, Ch. 439, L. 1975; amd. Sec. 19, Ch. 37, L. 1977; amd. Sec. 1, Ch. 109, L. 1977; R.C.M. 1947, 71-217; amd. Sec. 11, Ch. 651, L. 1983; amd. Sec. 1, Ch. 146, L. 1987; amd. Sec. 75, Ch. 609, L. 1987; amd. Sec. 410, Ch. 546, L. 1995; amd. Sec. 1, Ch. 341, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 341 substituted language in (2) requiring department to pay salaries of public assistance staff and outlining requirement for reimbursement of salaries, travel expenses, and administrative costs for former language that read: "(2) Public assistance staff personnel attached to the county board must be paid from state public assistance funds both their salaries and their travel expenses as provided for in 2-18-501 through 2-18-503 when away from the county seat in the performance of their duties, but the county board of public welfare shall reimburse the department of public health and human services from county poor funds the full amount of the salaries and travel expenses not reimbursed to the department by the federal government and the full amount of the department's administrative costs that are allocated by the department to the county for the administration of county welfare programs and not reimbursed to the department by the federal government. Under circumstances prescribed by the department of public health and human services, the reimbursement by the county board of public welfare may be less than the county share as prescribed in this subsection. All other administrative costs of the county department must be paid from county poor funds"; and made minor changes in style. Amendment effective July 1, 1999, and terminates June 30, 2001.

53-2-305. County departments under supervision of department. County departments are under the supervision of the department of public health and human services and are subject to audit by the department.

History: En. Subd. (c), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 6, Ch. 129, L. 1939; amd. Sec. 22, Ch. 121, L. 1974; R.C.M. 1947, 71-218; amd. Sec. 411, Ch. 546, L. 1995.

53-2-306. County department charged with local administration of public assistance. Except in a county that has transferred its public assistance and protective services responsibilities to the state under part 8 of this chapter, the county department of public welfare is charged with the local administration of all forms of public assistance operations in the county. All local administration must conform to federal and state law and the rules established by the department of public health and human services.

History: En. Subd. (a), Sec. 11, Part 1, Ch. 82, L. 1937; amd. Sec. 5, Ch. 199, L. 1951; amd. Sec. 1, Ch. 201, L. 1975; R.C.M. 1947, 71-221; amd. Sec. 12, Ch. 651, L. 1983; amd. Sec. 76, Ch. 609, L. 1987; amd. Sec. 412, Ch. 546, L. 1995.

Cross-References

Policy regarding child abuse, neglect, and dependency, 41-3-101.

Crime of unauthorized acquisition or transfer of food stamps, 45-6-312.

53-2-307 through 53-2-310. Repealed. Sec. 28, Ch. 670, L. 1985.

Compiler's Comments

Histories of Repealed Sections:

53-2-307. En. Subd. (a), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 4, Ch. 199, L. 1951; amd. Sec. 13, Ch. 212, L. 1965; amd. Sec. 50, Ch. 121, L. 1974; amd. Sec. 18, Ch. 37, L. 1977; R.C.M. 1947, 71-216(part); amd. Sec. 13, Ch. 651, L. 1983.

53-2-308. En. Sec. 4, Ch. 131, L. 1943; R.C.M. 1947, 71-111(part).

53-2-309. En. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 9, p. 54, L. 1876; re-en. Sec. 963, 5th Div. Rev. Stat. 1879; re-en. Sec. 1617, 5th Div. Comp. Stat. 1887; re-en. Sec. 3208, Pol. C. 1895; re-en. Sec. 2058, Rev. C. 1907; re-en. Sec. 4529, R.C.M. 1921; re-en. Sec. 4529, R.C.M. 1935; amd. Sec. 11, Ch. 37, L. 1977; R.C.M. 1947, 71-113(part).

53-2-310. En. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 9, p. 54, L. 1876; re-en. Sec. 963, 5th Div. Rev. Stat. 1879; re-en. Sec. 1617, 5th Div. Comp. Stat. 1887; re-en. Sec. 3208, Pol. C. 1895; re-en. Sec. 2058, Rev. C. 1907; re-en. Sec. 4529, R.C.M. 1921; re-en. Sec. 4529, R.C.M. 1935; amd. Sec. 11, Ch. 37, L. 1977; R.C.M. 1947, 71-113(part).

53-2-311 through 53-2-320 reserved.

53-2-321. Repealed. Sec. 32, Ch. 561, L. 1993.

History: En. Subd. 5, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.4, R.C.M. 1935; amd. Sec. 1, Ch. 165, L. 1941; amd. Sec. 1, Ch. 23, L. 1943; amd. Sec. 11, Ch. 212, L. 1965; amd. Sec. 1, Ch. 69, L. 1967; amd. Sec. 2, Ch. 279, L. 1974; R.C.M. 1947, 71-106; amd. Sec. 1, Ch. 11, Sp. L. 1981; amd. Sec. 4, Ch. 625, L. 1983.

53-2-322. County to levy taxes, budget, and make expenditures for public assistance activities. (1) Subject to 15-10-420, the board of county commissioners in each county shall levy 13.5 mills for the county poor fund as provided by law or so much of that amount as may be necessary. The board may levy up to an additional 12 mills if approved by the voters in the county. Subject to 15-10-420, a county shall levy sufficient mills to reimburse the state for any administrative or operational costs in excess of the administrative and operational costs for the previous fiscal year. The department of public health and human services shall notify the counties of the number of mills required to be levied. Once an additional levy has been approved, the amount of the approved levy may continue to be levied without voter approval.

(2) The board shall budget and expend so much of the funds in the county poor fund for:

(a) public assistance as necessary to reimburse the department for the county's proportionate share of the administrative costs and of all public assistance costs;

(b) salaries, travel expenses, and indirect costs, as provided in 52-1-110, of protective services employees of the department; and

(c) the county's proportionate share of any other public assistance activity that may be carried on jointly by the state and the county.

(3) The amounts set up in the budget for the reimbursements to the department must be sufficient to make all of these reimbursements in full. The budget must make separate provision for each public assistance activity and for salaries, travel expenses, and indirect costs for protective services activities of the department. Proper accounts must be established for the funds for all the activities.

(4) The department shall submit to the counties, no later than May 10, the most current county participation percentages that are necessary to establish preliminary county budgets. As soon as the county proposed budget provided for in 7-6-2315 has been agreed upon, a copy must be mailed to the department, and at any time before the final adoption of the budget, the department shall make recommendations with regard to changes in any part of the budget relating to the county poor fund as considered necessary in order to enable the county to discharge its obligations under the public assistance laws.

(5) The department shall promptly examine the county proposed budget in order to ascertain if the amounts provided for reimbursements to the department are likely to be sufficient and shall notify the county clerk of its findings. The board shall make changes in the amounts provided for reimbursements, if any are required, in order that the county will be able to make the reimbursements in full.

(6) The board of county commissioners may not make any transfer from the amounts budgeted for reimbursing the department without having first obtained a statement in writing from the department to the effect that the amount to be transferred will not be required during the fiscal year for the purposes for which the amounts were provided in the budget.

(7) The county poor fund, irrespective of the source of any part of the fund, may not be used directly or indirectly for the erection or improvement of any county building as long as the fund is needed for paying the county's proportionate share of public assistance and protective services, as described in 52-1-110, or its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county. Expenditures for improvement of any county buildings used directly for care of the poor, except a county hospital or county nursing home, may be made out of money in the county poor fund, whether the money was produced by the mill levy provided for in subsection (1) or from any additional levy authorized by law. The expenditure may be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for the building by the department and when the expenditure has been approved by the department.

(8) Money in the county poor fund may be used as matching funds for the receipt of federal money.

History: En. Subd. (b), Sec. 11, Part 1, Ch. 82, L. 1937; amd. Sec. 8, Ch. 129, L. 1939; amd. Sec. 3, Ch. 117, L. 1941; amd. Sec. 6, Ch. 199, L. 1951; amd. Sec. 1, Ch. 239, L. 1963; amd. Sec. 2, Ch. 69, L. 1967; amd. Sec. 23, Ch. 121, L. 1974; amd. Sec. 20, Ch. 37, L. 1977; R.C.M. 1947, 71-222; amd. Sec. 5, Ch. 625, L. 1983; amd. Sec. 14, Ch. 651, L. 1983; amd. Sec. 4, Ch. 206, L. 1985; amd. Sec. 2, Ch. 146, L. 1987; amd. Sec. 77, Ch. 609, L. 1987; amd. Sec. 13, Ch. 561, L. 1993; amd. Sec. 157, Ch. 418, L. 1995; amd. Sec. 2, Ch. 443, L. 1995; amd. Sec. 413, Ch. 546, L. 1995; amd. Sec. 129, Ch. 584, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 584 in two places in (1) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Cross-References

County tax levy for health care facilities, 7-6-2512.

Policy regarding child abuse, neglect, and dependency, 41-3-101.

53-2-323. Repealed. Sec. 32, Ch. 561, L. 1993.

History: Ap. p. Sec. 9, Part 2, Ch. 82, L. 1937; amd. Sec. 14, Ch. 129, L. 1939; amd. Sec. 7, Ch. 117, L. 1941; amd. Sec. 11, Ch. 199, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; amd. Sec. 31, Ch. 37, L. 1977; amd. Sec. 1, Ch. 168, L. 1977; Sec. 71-311, R.C.M. 1947; Ap. p. 16-1043 by Sec. 2, Ch. 365, L. 1975; Sec. 16-1043, R.C.M. 1947; R.C.M. 1947, 16-1043(1)(c), 71-311; amd. Sec. 1, Ch. 400, L. 1981; amd. Sec. 15, Ch. 651, L. 1983; amd. Sec. 78, Ch. 609, L. 1987.

Part 4

Liability of Applicant's Relatives (Repealed. Sec. 1, Ch. 310, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

53-2-401. En. Sec. 1, Ch. 180, L. 1953; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-233.

53-2-402. En. Sec. 2, Ch. 180, L. 1953; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 71-234.

53-2-403. En. Sec. 3, Ch. 180, L. 1953; amd. Sec. 1, Ch. 98, L. 1973; amd. Sec. 2, Ch. 379, L. 1977; R.C.M. 1947, 71-235(1), (3), (4), (5).

53-2-404. En. Sec. 4, Ch. 180, L. 1953; amd. Sec. 49, Ch. 391, L. 1973; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 71-236.

53-2-405. En. Sec. 5, Ch. 180, L. 1953; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 71-237.

53-2-406. En. Sec. 6, Ch. 180, L. 1953; R.C.M. 1947, 71-238.

53-2-407. En. Sec. 7, Ch. 180, L. 1953; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 71-239.

53-2-408. En. Sec. 8, Ch. 180, L. 1953; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 71-240.

Part 5

Investigations by Department of Justice

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Public records, Title 2, ch. 6.

53-2-501. Investigations and enforcement actions by department of justice. (1) When requested by the department of public health and human services, the department of justice shall:

(a) investigate matters relating to public assistance and vendor payments, including but not limited to the claim for an acceptance of public assistance benefits by public assistance recipients and the receipt and disbursal of public assistance funds by state, county, or other governmental agencies;

(b) institute civil or criminal actions in the appropriate courts to enforce the public assistance laws and violations thereof.

(2) For purposes of the enforcement of and investigations relating to laws governing public assistance and vendor payments, the department of justice is a criminal justice agency, as defined in 44-5-103, and employees designated by

the department have peace officer status with the powers of search, seizure, and arrest.

History: En. Sec. 1, Ch. 295, L. 1973; amd. Sec. 23, Ch. 37, L. 1977; R.C.M. 1947, 71-233.1; amd. Sec. 1, Ch. 129, L. 1989; amd. Sec. 24, Ch. 414, L. 1993; amd. Sec. 414, Ch. 546, L. 1995.

Cross-References

State debt collection service, Title 17, ch. 4.

State administrative collection of child support — dependent children, Title 40, ch. 5, part 2.

Deduction from wages for owed child support, Title 40, ch. 5, part 3.

53-2-502. Cooperation of governmental agencies with department of justice. All state departments and agencies and county or other governmental agencies shall cooperate with the department of justice and its employees to effectuate the purpose of this part.

History: En. Sec. 2, Ch. 295, L. 1973; R.C.M. 1947, 71-233.2; amd. Sec. 24, Ch. 414, L. 1993.

53-2-503. Information made available to department of justice. (1) The department of public health and human services and its local units shall make available to the department of justice information contained in the public assistance files pertinent to the investigations and judicial actions described in 53-2-501.

(2) Every other state, county, or other governmental agency shall make available to the agents or attorneys of the department of justice all records, files, memoranda, forms, or other papers relating to public assistance matters, including income tax returns filed with the department of revenue.

History: En. Sec. 3, Ch. 295, L. 1973; amd. Sec. 24, Ch. 37, L. 1977; R.C.M. 1947, 71-233.3; amd. Sec. 24, Ch. 414, L. 1993; amd. Sec. 415, Ch. 546, L. 1995.

53-2-504. Unauthorized disclosure of information obtained in department of justice investigations a criminal act. (1) No information obtained by the department of justice or its agents and attorneys as a result of an investigation may be disclosed except in accordance with the laws applicable to the source of information. However, the information may be used or disclosed under 40-5-261 and rules adopted under 40-5-262 or as necessary in any court action.

(2) Each employee violating the disclosure provisions is subject to the criminal charge and penalties applicable to the source of information.

History: En. Sec. 4, Ch. 295, L. 1973; R.C.M. 1947, 71-233.4; amd. Sec. 4, Ch. 543, L. 1985; amd. Sec. 5, Ch. 418, L. 1989; amd. Sec. 24, Ch. 414, L. 1993.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right to privacy, Art. II, sec. 10, Mont. Const.

Public records, Title 2, ch. 6.

53-2-505. Rulemaking authority of department of justice. The department of justice may adopt rules to implement this part.

History: En. Sec. 28, Ch. 414, L. 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 6

Grants of Assistance and Liability Therefor — Appeals

53-2-601. Repealed. Sec. 27, Ch. 492, L. 1995.

History: En. Sec. 1, Ch. 228, L. 1953; amd. Sec. 1, Ch. 327, L. 1969; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-242(part); amd. Sec. 1, Ch. 383, L. 1981; amd. Sec. 2, Ch. 266, L. 1989; amd. Sec. 14, Ch. 561, L. 1993.

53-2-602. Grants based on need. Subject to review by the county board, the staff of the county department shall determine grants and changes in grants, based on the needs of each applicant, after investigation in accordance with the rules and standards of assistance prescribed by the department of public health and human services.

History: En. Subd. (d), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 7, Ch. 129, L. 1939; amd. Sec. 1, Ch. 98, L. 1951; R.C.M. 1947, 71-219; amd. Sec. 1, Ch. 276, L. 1983; amd. Sec. 416, Ch. 546, L. 1995.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-2-603. Award of public assistance determined after investigation. (1) Upon completion of an investigation, the county board shall determine whether the applicant is eligible for public assistance under the provisions of this title, the type and amount of public assistance the applicant must receive, and the date upon which the public assistance must begin. This subsection does not apply to any form of public assistance managed by a managed care contractor, as provided in 53-6-116, when a determination of eligibility is made by the managed care contractor.

(2) The department, if necessary to conform with the United States Social Security Act, may issue rules to the county welfare departments requiring the use of the declaration method, in a form that the department may prescribe, for the purpose of determining eligibility, regardless of any other investigative provisions under this title, and for all types of assistance. These rules may include any additional investigations the department may require.

History: En. Sec. 1, Ch. 228, L. 1953; amd. Sec. 1, Ch. 327, L. 1969; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-242(part); amd. Sec. 22, Ch. 670, L. 1985; amd. Sec. 7, Ch. 590, L. 1995.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-2-604. Repealed. Sec. 28, Ch. 670, L. 1985.

History: En. Sec. 16, Part 1, Ch. 82, L. 1937; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-227.

53-2-605. Repealed. Sec. 28, Ch. 670, L. 1985.

History: En. Subd. (a), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 4, Ch. 199, L. 1951; amd. Sec. 13, Ch. 212, L. 1965; amd. Sec. 50, Ch. 121, L. 1974; amd. Sec. 18, Ch. 37, L. 1977; R.C.M. 1947, 71-216(part).

53-2-606. Right of appeal. (1) If an application for assistance for food stamps, FAIM financial assistance, as defined in 53-2-902, or medicaid is not acted upon promptly or if a decision is made with which the applicant or recipient is not satisfied, the applicant or recipient may appeal to the board of public assistance for a fair hearing by addressing a request for a hearing to the department of public health and human services. The board of public assistance shall, upon receipt of a request for a hearing, give the applicant or recipient prompt notice and opportunity for a fair hearing.

(2) The department may upon its own motion review any decision of a county welfare board and may consider any application upon which a decision has not been made by the county board within a reasonable time from the filing of the decision. The department may have an additional investigation made and shall make a decision as to the granting of assistance and the amount of assistance to be granted the applicant as in its opinion is justified and in conformity with the provisions of this title.

(3) If the department reviews a county decision on its own motion, applicants or recipients affected by the decisions of the department shall upon request be given reasonable notice and an opportunity for a fair hearing by the board of public assistance.

(4) All decisions of the department or the board of public assistance are final and are binding and must be complied with by the county department.

History: En. Sec. 12, Part 1, Ch. 82, L. 1937; amd. Sec. 7, Ch. 199, L. 1951; amd. Sec. 1, Ch. 24, L. 1953; amd. Sec. 24, Ch. 121, L. 1974; R.C.M. 1947, 71-223; amd. Sec. 15, Ch. 561, L. 1993; amd. Sec. 417, Ch. 546, L. 1995; amd. Sec. 8, Ch. 486, L. 1997.

Cross-References

Contested case defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Contested cases, Title 2, ch. 4, part 6.

53-2-607. Assistance not assignable or subject to legal process. Except as otherwise provided in this title, assistance granted under this title is not transferable or assignable at law or in equity and none of the money paid or payable under this title is subject to execution, levy, attachment, garnishment, or other legal process or to the operation of any bankruptcy or insolvency law.

History: En. Sec. 18, Part 1, Ch. 82, L. 1937; amd. Sec. 26, Ch. 121, L. 1974; R.C.M. 1947, 71-229.

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

Exempt property — bankruptcy proceedings, 31-2-106.

53-2-608. Method of issuing assistance grants. (1) Checks in payment of public assistance must be issued by the department of public health and human services upon approved certificates of award and reports of changes of eligible grantees as are forwarded by the county to the state department, and all checks must be mailed to the individual recipient or the appropriate vendor. The checks in payment of public assistance must be issued in the full approved amount for each eligible approved grantee, and the original monthly payment must be from the state public assistance accounts. All public assistance checks represent cash on demand at full par value to the recipient and vendor.

(2) Whenever the department of public health and human services, acting pursuant to standards established by the department, determines that any otherwise eligible recipient of public assistance has, by reason of any physical or mental condition, such inability to manage funds that making payments to the recipient would be contrary to the recipient's welfare, the department may,

under standards established under the state plan, make the public assistance payment on behalf of the recipient to another person found by the department to be interested in or concerned with the welfare of the recipient.

History: En. Sec. 19, Part 1, Ch. 82, L. 1937; amd. Sec. 1, Ch. 71, L. 1957; amd. Sec. 14, Ch. 212, L. 1965; amd. Sec. 1, Ch. 244, L. 1969; amd. Sec. 49, Ch. 121, L. 1974; amd. Sec. 22, Ch. 37, L. 1977; R.C.M. 1947, 71-230(1), (2); amd. Sec. 1, Ch. 398, L. 1981; amd. Sec. 16, Ch. 561, L. 1993; amd. Sec. 418, Ch. 546, L. 1995.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-2-609. Revocation of assistance. If the county department or department of public health and human services has reason to believe, by reason of a complaint or otherwise, that public assistance under this title has been improperly granted, it shall have an investigation made. If it appears as a result of an investigation that the assistance was improperly granted, the department of public health and human services shall notify the county department that further payments may not be authorized for the recipient. The right of appeal is granted recipients whose assistance has been revoked.

History: En. Sec. 17, Part 1, Ch. 82, L. 1937; amd. Sec. 25, Ch. 121, L. 1974; R.C.M. 1947, 71-228; amd. Sec. 419, Ch. 546, L. 1995.

53-2-610. County to reimburse department. (1) On or before the 20th of each month, the department shall present a claim for reimbursement to each county department for its proportionate share of public assistance granted in the county to recipients during the month and for vendor medical payments made on behalf of recipients in the previous month. The county department shall make the reimbursement to the department within 20 days after the claim is presented.

(2) The counties may not be required to reimburse the department for:

(a) any portion of public assistance paid to a household eligible for FAIM financial assistance, as defined in 53-2-902, if the household includes an enrolled Indian who is the caretaker relative of a needy dependent child; or

(b) any payment on behalf of any person in a state-operated medical institution.

(3) (a) From the original date of entrustment or the original date of state residency, whichever is earlier, recipients of public assistance who become wards or patients in a licensed nursing home or hospital, foster home, or private charitable institution are the financial responsibility of the appropriate county as provided in subsections (3)(b) through (3)(d).

(b) The county in which commitment of an adult is initiated is considered the county of financial responsibility except when a court decree declares the residency to be otherwise. When an adult is transferred from a facility or institution to one of the facilities listed in subsection (3)(a), the county that initiated the original commitment is considered the county of financial responsibility except in the case of an adult transfer from an out-of-state institution, in which case the county in which the facility is located is considered the county of financial responsibility.

(c) In all cases in which a minor patient or ward is involved, the county of financial responsibility is the county in which the parent or guardian resides. If the custody of a minor is entrusted to a state agency, the agency may make a reasonable declaration of the county residency of its ward using applicable guidelines enumerated in this section.

(d) If a person is or becomes an adult while in an institution, the person may determine the county of residence when the person is restored to competency and released. The person becomes the financial responsibility of the new county of residence.

History: (1)En. Sec. 19, Part 1, Ch. 82, L. 1937; amd. Sec. 1, Ch. 71, L. 1957; amd. Sec. 14, Ch. 212, L. 1965; amd. Sec. 1, Ch. 244, L. 1969; amd. Sec. 49, Ch. 121, L. 1974; amd. Sec. 22, Ch. 37, L. 1977; Sec. 71-230, R.C.M. 1947; (2)En. Subd. (h), Sec. 7, Part 1, Ch. 82, L. 1937; amd. Sec. 3, Ch. 129, L. 1939; amd. Sec. 1, Ch. 219, L. 1947; amd. Sec. 3, Ch. 199, L. 1951; amd. Sec. 1, Ch. 141, L. 1953; amd. Sec. 12, Ch. 212, L. 1965; amd. Sec. 17, Ch. 325, L. 1967; amd. Sec. 4, Ch. 261, L. 1971; amd. Sec. 14, Ch. 37, L. 1977; Sec. 71-211, R.C.M. 1947; (3)En. 71-302.2 by Sec. 1, Ch. 225, L. 1974; amd. Sec. 25, Ch. 37, L. 1977; Sec. 71-302.2, R.C.M. 1947; R.C.M. 1947, 71-211(part), 71-230(3), 71-302.2(3); amd. Sec. 1, Ch. 450, L. 1979; amd. Sec. 3, Ch. 266, L. 1989; amd. Sec. 17, Ch. 561, L. 1993; amd. Sec. 420, Ch. 546, L. 1995; amd. Sec. 9, Ch. 486, L. 1997.

Cross-References

Residence — rules for determining, 1-1-215.

53-2-611. Repealed. Sec. 27, Ch. 492, L. 1995.

History: (1), (2)En. Sec. 7, Ch. 228, L. 1953; amd. Sec. 2, Ch. 299, L. 1973; amd. Sec. 49, Ch. 121, L. 1974; Sec. 71-247, R.C.M. 1947; (3)En. Sec. 10, Ch. 228, L. 1953; amd. Sec. 49, Ch. 121, L. 1974; Sec. 71-250, R.C.M. 1947; R.C.M. 1947, 71-247, 71-250; amd. Sec. 155, Ch. 370, L. 1987; amd. Sec. 3, Ch. 482, L. 1989.

53-2-612. Lien of department or county upon third-party recoveries. (1) Upon notice by the department, a county, or the recipient to a third party or the third party's insurer as provided in subsection (5)(b), the department or county has a lien upon all money paid by a third party or the third party's insurer in satisfaction of a judgment or settlement arising from a recipient's claim for damages or compensation for personal injury, disease, illness, or disability to the extent that the department or county has paid medical assistance on behalf of the recipient for the same personal injury, disease, illness, or disability.

(2) The department or county may, in the name of the recipient on whose behalf medical assistance has been paid by the department or county, commence and prosecute to final conclusion any action that may be necessary to recover from a third party or the third party's insurer compensation or damages for medical assistance paid by the department or county on behalf of the recipient. This section does not affect the right of the recipient to initiate and prosecute to final conclusion an action for damages or compensation in the recipient's own name in accordance with the provisions of this section.

(3) (a) The lien:

(i) applies to all money paid by a third party or a third party's insurer regardless of whether the recovery is allocated by the parties or a court to any particular type or element of damages; and

(ii) is subordinate to the lien of an attorney under 37-61-420.

(b) Unless specifically provided by law, the recipient's right to recover damages or compensation from a third party or a third party's insurer may not be reduced or denied on the ground that the recipient's costs of medical treatment and medical-related services have been paid by the department or county under any public assistance program.

(c) From the amount collected by the department, county, or recipient from legal proceedings or as a result of settlement, reasonable attorney fees and costs must be first deducted and paid. Unless the department or county and the recipient agree to a different settlement, the amount previously paid as medical assistance by the department or county, less a pro rata share of attorney fees and costs, must be deducted next and paid to the department or county. The remainder, if any, must be paid to the recipient.

(d) In all cases of payment to the department or county out of an amount collected from a third party or insurer on a recipient's claim, the amount of the lien must be reduced by a pro rata share of attorney fees and costs as provided in subsection (3)(c), but the department or county may not be required to participate in payment of attorney fees and costs unless the recipient's claim results in recovery out of which the department or county receives full or partial payment of its lien.

(e) Except as provided in subsections (3)(e)(i) and (3)(e)(ii), the department may not impose a lien under this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.

(i) The department may impose a lien under this section upon a self-sufficiency trust or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is required by federal law to recover or collect from the trust or its assets as a condition of receiving federal financial participation for the medicaid program.

(ii) To the extent otherwise permitted by this section, the department is not precluded from asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any transfer of the property to the trust is subject to the lien.

(4) (a) A recipient of medical assistance or the recipient's legal representative shall notify the department or county by certified letter within 30 days if the recipient or the recipient's legal representative asserts a claim against a third party or a third party's insurer for damages or compensation for a personal injury, disease, illness, or disability for which the department or county paid medical assistance in whole or in part or for which the recipient has applied for medical assistance. The notice must be mailed to the director of the department or the director of the county department that paid medical assistance. At the same time, a copy must be sent by certified mail to the third party or the third party's insurer.

(b) The notice must contain the following information:

(i) the name and address of the recipient and the recipient's legal representative, if any;

(ii) the name and address of the third party alleged to be liable to the recipient;

(iii) the name and address of any known insurer of the third party; and

(iv) the judicial district and docket number of any action filed.

(c) A recipient or the recipient's legal representative who has received actual notice that the department or county has paid medical assistance is liable to the department or county for the amount it is entitled to receive under this section if:

(i) the recipient or the recipient's legal representative fails to timely notify the department or county or fails to mail a copy of the notice to the third party or the third party's insurer; and

(ii) a third party or the third party's insurer that did not receive notice from the department or county as provided for in subsection (5)(b) pays the recipient or the recipient's legal representative without satisfying any lien of the department or county.

(5) (a) If a third party or the third party's insurer that has received notice of the department's or county's lien as provided for in subsection (5)(b) makes payment in whole or in part of the recipient's claim without first satisfying the lien of the department or county, the third party or the third party's insurer is liable to the department or county for the amount the department or county is entitled to receive under this section.

(b) For the purposes of subsection (5)(a), a third party or the third party's insurer has been given notice if:

(i) the department or county mails, by certified mail, to the third party or the third party's insurer:

(A) a statement of the medical assistance paid or that may be paid by the department or county on behalf of the recipient; and

(B) a claim for reimbursement;

(ii) the recipient or the recipient's legal representative mails, by certified mail, to the third party or the third party's insurer:

(A) a copy of the notice required by subsection (4)(a); or

(B) a statement stating that the recipient has applied for or has received medical assistance from the department or county in connection with the same claim; or

(iii) the recipient or the recipient's legal representative has commenced an action against the third party or the third party's insurer for damages or compensation for personal injury, disease, illness, or disability for which the department or county has paid or may pay medical assistance, in whole or in part, and the department or county files in the court in which the action is pending a notice of lien stating that a lien is claimed for medical assistance on any money paid in satisfaction of any judgment in or settlement of the action and that:

(A) medical assistance in a stated amount has been paid by the department or county on behalf of the recipient; or

(B) medical assistance may be paid on behalf of the recipient.

(6) As used in this section, the following definitions apply:

(a) "County" means a county department of welfare in a county that has not transferred its public assistance responsibilities to the state under the provisions of Title 53, chapter 2, part 8.

(b) "Legal representative" means an attorney having or exercising authority on behalf of a recipient with respect to a claim or action to recover damages or compensation from a third party or a third party's insurer.

(c) "Recipient" means a person on whose behalf the department or a county has paid or may pay medical assistance for the cost of medical treatment and medical-related services for personal injury, disease, illness, or disability. If the context allows, the term includes a recipient's legal representative.

(d) "Third party" means an individual, institution, corporation, or public or private agency that is or may be liable to pay all or part of the cost of medical treatment and medical-related services for personal injury, disease, illness, or disability of a recipient of medical assistance from the department or a county and includes but is not limited to insurers, health service organizations, and parties liable or who may be liable in tort.

History: En. 71-241.1 by Sec. 1, Ch. 379, L. 1977; R.C.M. 1947, 71-241.1; amd. Sec. 1, Ch. 535, L. 1985; amd. Sec. 1, Ch. 482, L. 1989; amd. Sec. 3, Ch. 262, L. 1997.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

53-2-613. Application for assistance — assignment of support rights. (1) Applications for public assistance, including but not limited to FAIM financial assistance, as defined in 53-2-902, and medical assistance, must be made to the county department of public welfare in the county in which the person is residing. The application must be submitted, in the manner and form prescribed by the department, and must contain information required by the department.

(2) A person who signs an application for FAIM financial assistance, as defined in 53-2-902, or related medical assistance assigns to the state, to the department, and to the county welfare department all rights that the applicant may have to monetary and medical support from any other person in the applicant's own behalf or in behalf of any other family member for whom application is made. A person who signs an application for public assistance other than FAIM financial assistance, as defined in 53-2-902, or related medical assistance may, in accordance with rules adopted by the department, be required to assign to the state, to the department, and to the county welfare department all rights that the applicant may have to monetary and medical support from any other person in the applicant's own behalf or on behalf of any other family member for whom application is made.

(3) The assignment:

(a) is effective for both current and accrued support, including unpaid support that accrued before the applicant received public assistance, and medical obligations;

(b) takes effect upon a determination that the applicant is eligible for public assistance; and

(c) remains in effect with respect to the amount of any unpaid support and medical obligation accrued under the assignment that was owed prior to the termination of public assistance to a recipient.

(4) If a person who is the legal custodian and child support obligee under a support order relinquishes physical custody of a child to a caretaker relative without obtaining a modification of legal custody and the caretaker relative is determined eligible for public assistance on behalf of the child, the child support obligation is transferred by operation of law to the caretaker relative and may be assigned as provided in subsection (2). The transfer and assignment terminate when the caretaker relative no longer has physical custody of the child, except for any unpaid support still owing under the assignment at that time.

(5) Whenever a child support or spousal support obligation is assigned to the department pursuant to this section, the following provisions apply:

(a) If the support obligation is based upon a judgment or decree or an order of a court of competent jurisdiction, the department may retain assigned support amounts in an amount sufficient to reimburse the cumulative total of public assistance money expended.

(b) A recipient or former recipient of public assistance may not commence or maintain an action to recover or enforce a delinquent support obligation or make any agreements with any other person or agency concerning the support obligation, except as provided in 40-5-202.

(c) If a notice of assigned interest is filed with the district court, the clerk of the court may not pay over or release for the benefit of any recipient or former recipient of public assistance any amounts received pursuant to a judgment or decree or an order of the court until the department's child support enforcement division has filed a written notice that:

(i) the assignment of current support amounts has been terminated; and

(ii) all assigned support delinquencies, if any, are satisfied or released.

(d) A recipient or former recipient of public assistance may not take action to modify or make any agreement to modify, settle, or release any past, present, or future support obligation unless the department's child support enforcement division is given written notice under the provisions of 40-5-202. Any modifications or agreements entered into without the participation of the department are void with respect to the state, the department, and the county welfare department.

(e) A support obligation assigned under this section may not be terminated, invalidated, waived, set aside, or considered uncollectible by the conduct, misconduct, or failure of a recipient or former recipient of public assistance to take any action or to cease any action required under a decree, judgment, support order, custody order, visitation order, restraining order, or other similar order.

History: En. Sec. 1, Ch. 79, L. 1981; amd. Sec. 1, Ch. 131, L. 1987; amd. Sec. 155, Ch. 370, L. 1987; amd. Sec. 25, Ch. 702, L. 1989; amd. Sec. 23, Ch. 631, L. 1993; amd. Sec. 14, Ch. 60, L. 1995; amd. Sec. 421, Ch. 546, L. 1995; amd. Sec. 10, Ch. 486, L. 1997; amd. Sec. 94, Ch. 552, L. 1997; amd. Sec. 1, Ch. 29, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 29 in (3)(a) after "support" inserted language to include unpaid child support accruing before receipt of public assistance; deleted former (3)(d) that read: "(d) does not apply to support that accrued before the applicant received public assistance"; in (5)(a) after "reimburse" inserted "the cumulative total of"; and made minor changes in style. Amendment effective February 18, 1999.

Cross-References

Residence — rules for determining, 1-1-215.

State debt collection service, Title 17, ch. 4.

State administrative collection of child support — dependent children, Title 40, ch. 5, part 2.

Deduction from wages for owed child support, Title 40, ch. 5, part 3.

Department of Public Health and Human Services to monitor and enforce child support payments, 40-5-412.

Investigations by Department of Justice, Title 53, ch. 2, part 5.

Part 7

Work Experience and Training Program (Repealed. Sec. 14, Ch. 550, L. 1989)

Part Compiler's Comments

Histories of Repealed Sections:

53-2-701. En. Sec. 1, Ch. 390, L. 1981.
53-2-702. En. Sec. 2, Ch. 390, L. 1981.
53-2-703. En. Sec. 3, Ch. 390, L. 1981.
53-2-704. En. Sec. 4, Ch. 390, L. 1981.
53-2-705. En. Sec. 5, Ch. 390, L. 1981.
53-2-706. En. Sec. 6, Ch. 390, L. 1981; amd. Sec. 10, Ch. 140, L. 1985.
53-2-707. En. Sec. 7, Ch. 390, L. 1981.
53-2-708. En. Sec. 8, Ch. 390, L. 1981.
53-2-709. En. Sec. 10, Ch. 390, L. 1981.

Part 8

State Assumption of County Public Assistance Programs

53-2-801. Purpose. The purpose of this part is to provide for the department of public health and human services to assume all responsibilities for public assistance programs and for protective services for children and adults that, as of July 1, 1983, are provided by the counties pursuant to Titles 41 and 53. The assumption may become effective only at the option and with the express consent of each individual county requesting state assumption. State assumption allows counties to pay the state the proceeds from the 9-mill levy provided for in 53-2-813 rather than an amount based on the actual cost of providing public assistance and protective services in the county. Counties that opt for state assumption may provide other optional services for indigents with money available from funds derived from the difference between the 9-mill levy and the maximum amount of 13.5 mills permitted by 53-2-322.

History: En. Sec. 1, Ch. 651, L. 1983; amd. Sec. 79, Ch. 609, L. 1987; amd. Sec. 18, Ch. 561, L. 1993; amd. Sec. 422, Ch. 546, L. 1995.

53-2-802. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "County department" means the county department of public welfare provided for in part 3 of this chapter.

(2) "Mill levy equivalent" means the prior year's expenditure divided by the value of 1 mill.

(3) "Needy person" is one who is eligible for public assistance under the laws of this state.

(4) "Protective services" means services to children and adults to be provided by the department of public health and human services as permitted by Titles 41 and 53.

(5) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county department, regardless of the original source of assistance.

(6) "State assumption" means the transfer to the department of public health and human services by the board of county commissioners of all powers and duties, including staff personnel as provided in 53-2-301 through 53-2-306 and for public assistance and protective services, respectively, provided by the county department pursuant to Titles 41 and 53, except as otherwise specifically provided in this part. A county may continue to provide optional

indigent assistance as provided in 53-3-116 and health care services as provided in 7-6-2512.

History: En. Sec. 2, Ch. 651, L. 1983; amd. Sec. 23, Ch. 670, L. 1985; amd. Sec. 80, Ch. 609, L. 1987; amd. Sec. 19, Ch. 561, L. 1993; amd. Sec. 19, Ch. 520, L. 1995; amd. Sec. 423, Ch. 546, L. 1995.

53-2-803. Authority to adopt rules. The department of public health and human services may adopt rules necessary to carry out the purposes of this part, including implementing transfer of the county programs to the department.

History: En. Sec. 6, Ch. 651, L. 1983; amd. Sec. 1, Ch. 370, L. 1985; amd. Sec. 81, Ch. 609, L. 1987; amd. Sec. 20, Ch. 561, L. 1993; amd. Sec. 424, Ch. 546, L. 1995.

Cross-References

Adoption of rules, Title 2, ch. 4, part 3.

53-2-804. Renumbered 53-3-116. Sec. 314(3), Ch. 42, L. 1997.

53-2-805 through 53-2-810 reserved.

53-2-811. Transfer of county public assistance and protective services to the state — reassumption of responsibility. (1) All responsibility of a county for public assistance and protective services for children and adults pursuant to Titles 41 and 53 may be transferred to the department of public health and human services, except that the county attorney shall continue to provide legal assistance and representation for the purposes of adult and child protective services without charge and all debts and obligations incurred prior to the effective date of state assumption continue as the responsibility of the county.

(2) The board of county commissioners, after public hearing, may by resolution or ordinance transfer to the department of public health and human services all powers and duties for public assistance and protective services for children and adults, including the selection, supervision, and termination of staff personnel associated with the performance of these activities. Upon the effective date of the transfer, the department of public health and human services shall assume all powers and duties related to public assistance and protective services and accorded by law to the county welfare department. If the notice required in subsection (3) is given, the transfer is effective at the start of the next state fiscal year.

(3) Counties opting for state assumption shall notify the department of public health and human services by October 1 if the county wishes to change its status on the following July 1. A county that has opted for state assumption prior to July 1, 1995, may reassume responsibility for public assistance and protective services on July 1, 1996, if the county notifies the department prior to September 30, 1995.

(4) Counties opting for state assumption shall permit the department of public health and human services to use the same facilities currently occupied by the county department or substantially equal facilities, with fair rental value for the facilities to be paid by the department. Counties opting for state assumption shall transfer to the department all materials, equipment, and supplies used in the operation of the county department and which were paid for in whole or in part with federal or state funds.

History: En. Sec. 3, Ch. 651, L. 1983; amd. Sec. 24, Ch. 670, L. 1985; amd. Sec. 82, Ch. 609, L. 1987; amd. Sec. 21, Ch. 561, L. 1993; amd. Sec. 425, Ch. 546, L. 1995.

Cross-References

State fiscal year to begin July 1, 17-2-110.

Duty of County Attorney — administration of public assistance, 53-2-303.

53-2-812. State assumption — permanent transfer to state — exceptions. Except as provided in this section, a county opting for state assumption does so on a complete and permanent basis. State assumption or reassumption must be made pursuant to the adoption of a resolution or ordinance as provided in 53-2-811(2) and notice to the department of public health and human services as provided in 53-2-811(3). A county that has opted for state assumption prior to July 1, 1995, may reassume responsibility for public assistance and protective services if notice is provided pursuant to 53-2-811(2) and (3). A county shall notify the department of public health and human services by October 1 if the county wishes to change its status on the following July 1. Under a retention or reassumption, staff personnel continue under the supervision and control of the department. All debts and obligations of the department pertaining to public assistance and protective services at the time of reassumption must be transferred to the county opting for reassumption. A county may not retain or reassume assistance programs partially funded by the federal government.

History: En. Sec. 4, Ch. 651, L. 1983; amd. Sec. 83, Ch. 609, L. 1987; amd. Sec. 22, Ch. 561, L. 1993; amd. Sec. 426, Ch. 546, L. 1995.

53-2-813. Mill levy for counties transferring public assistance and protective services. (1) For the purpose of this part and subject to 15-10-420, 9 mills must be levied annually in those counties opting for state assumption.

(2) For a county electing state assumption, the proceeds of the mill levy established in subsection (1) must be deposited in the state special revenue fund in the state treasury to the credit of the department of public health and human services.

History: En. Sec. 7, Ch. 651, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 110, Ch. 370, L. 1987; amd. Sec. 84, Ch. 609, L. 1987; amd. Sec. 23, Ch. 561, L. 1993; amd. Sec. 427, Ch. 546, L. 1995; amd. Sec. 130, Ch. 584, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 584 in (1) inserted reference to 15-10-420. Amendment effective May 10, 1999.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

53-2-814 through 53-2-820 reserved.

53-2-821. Repealed. Sec. 32, Ch. 561, L. 1993.

History: En. Sec. 5, Ch. 651, L. 1983; amd. Sec. 85, Ch. 609, L. 1987.

53-2-822. Repealed. Sec. 32, Ch. 561, L. 1993.

History: En. Sec. 8, Ch. 651, L. 1983; amd. Sec. 86, Ch. 609, L. 1987; amd. Sec. 1, Ch. 451, L. 1989.

Part 9
Food Stamp Program

53-2-901. Administration of food stamp program — rulemaking authority. (1) The department is authorized to administer the food stamp program in compliance with all federal laws and requirements.

(2) The department shall adopt rules that are necessary and desirable for the administration of the food stamp program.

(3) The department shall adopt rules that may include but are not limited to rules concerning:

(a) eligibility for assistance, including income and resource limitations, income and resource exclusions, and transfers of resources;

(b) amounts of assistance and methods for determining benefit amount;

(c) periodic redetermination of eligibility;

(d) reporting requirements;

(e) work registration, employment, and training requirements and exemptions from those requirements;

(f) procedures and policies of the employment and training program;

(g) disqualification because of intentional program violations, for voluntarily quitting a job without good cause, or for any other violation of program rules; and

(h) penalties applicable to recipients of FAIM financial assistance who have been sanctioned because of failure to meet any requirement of that program.

(4) The department may adopt rules that include but are not limited to rules concerning:

(a) requirements for recipients to assign the right of support;

(b) requirements for recipients to cooperate with the state agency administering the child support enforcement program established under Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq.; and

(c) disqualification for failure to perform actions required by other means-tested programs, for failure to cooperate with the state agency administering the child support enforcement program under Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq., or for failure to pay court-ordered child support as provided in sections 819, 822, and 823 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 7 U.S.C. 2015.

History: En. Sec. 11, Ch. 491, L. 1995; amd. Sec. 11, Ch. 486, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-2-902. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided in Title 2, chapter 15, part 22.

(2) "Employment and training demonstration project" means the employment and training program for recipients of FAIM financial assistance who are participating in the FAIM project.

(3) "FAIM financial assistance" means the program that provides participants in the job supplement program, pathways program, and

community services program of the FAIM project with benefits that may include cash, services, and noncash assistance.

(4) "FAIM project" means the families achieving independence in Montana project, including the FAIM financial assistance part established in 53-4-603, a food stamp part administered pursuant to the Food Stamp Act of 1977, 7 U.S.C. 2026, and a medicaid part administered pursuant to the Social Security Act, 42 U.S.C. 1315.

(5) "Food stamp program" means the provision of food stamp benefits that can be used to purchase food to low-income persons pursuant to the Food Stamp Act Amendments of 1980, 7 U.S.C. 2011, et seq.

History: En. Sec. 12, Ch. 491, L. 1995; amd. Sec. 12, Ch. 486, L. 1997.

53-2-903. Employment and training program. The department shall establish and administer an employment and training program for food stamp recipients that is in compliance with federal requirements. For purposes of the FAIM project, in accordance with waivers of federal law that are granted by the food and consumer service of the U.S. department of agriculture, the department may merge its food stamp program employment and training program with its FAIM financial assistance employment and training program or may modify the rules and requirements of the food stamp program employment and training program as necessary to make them consistent with those of the employment and training demonstration project.

History: En. Sec. 13, Ch. 491, L. 1995; amd. Sec. 13, Ch. 486, L. 1997.

53-2-904. Income and resource exclusions — FAIM participants. In accordance with waivers of federal law that are granted by the food and consumer service of the U.S. department of agriculture, the department may by rule establish special income and resource exclusions to be applied to participants of the FAIM project in determining their eligibility for food stamps and in determining the benefit amount. Exclusions that may be established include but are not limited to exclusions for one-time only cash payments for special employment-related needs as provided in 53-4-603 in determining the recipients' eligibility for food stamps and determining the benefit amount.

History: En. Sec. 14, Ch. 491, L. 1995; amd. Sec. 14, Ch. 486, L. 1997.

Part 10 reserved

Part 11

Coordination of Job Training and Employment Programs

53-2-1101. Legislative findings. The legislature finds and declares that:

(1) many economically disadvantaged persons are unable to take their place in the economic mainstream of society because they lack the skills and training needed to obtain productive employment or to avoid long-term dependency on public assistance programs;

(2) existing state and federal employment and training programs, including the work incentive program and the programs administered under Title II-A of the Job Training Partnership Act, have proved to be a multiple, uncoordinated response to the needs of the economically disadvantaged; and

(3) a successful job training program will require a comprehensive, integrated range of nonduplicative employment and training services for economically disadvantaged persons that will result in economic self-sufficiency through placement of economically disadvantaged persons in long-term, sustainable employment.

History: En. Sec. 1, Ch. 694, L. 1989; amd. Sec. 25, Ch. 561, L. 1993.

53-2-1102. Legislative intent. Consistent with the findings in 53-2-1101, it is the intent of the legislature to:

(1) establish and promote a system of employment and training programs responsive to the needs of economically disadvantaged persons;

(2) maximize resources by coordinating state employment and training programs under Title II-A of the Job Training Partnership Act with state work programs for public assistance recipients and other programs designed to prepare economically disadvantaged persons for employment; and

(3) assure cost-effective delivery of employment and training services to those most in need by requiring that programs under Title II-A of the Job Training Partnership Act be based on performance and by mandating legislative review of such programs.

History: En. Sec. 2, Ch. 694, L. 1989.

53-2-1103. Definitions. For the purposes of this part, unless the context requires otherwise, the following definitions apply:

(1) "Economically disadvantaged person" has the same meaning as provided in section 4 of the Job Training Partnership Act (29 U.S.C. 1503).

(2) "Job Training Partnership Act" means the federal Job Training Partnership Act, Public Law 97-300 (29 U.S.C. 1501, et seq.), as amended.

(3) "Job training plan" means the plan for providing services and training in a service delivery area, as required in 53-2-1107.

(4) "Program" means the program created by 53-2-1104 to implement the provisions of Title II-A of the Job Training Partnership Act.

(5) "Program year" means the fiscal year beginning on July 1 of the year for which an appropriation is made for the program established under this part, as provided in section 161 of the Job Training Partnership Act (29 U.S.C. 1571).

(6) "Public assistance program" means the state program of FAIM financial assistance, as defined in 53-2-902.

(7) "Service delivery area" means an area designated as provided in section 101 of the Job Training Partnership Act (29 U.S.C. 1511).

History: En. Sec. 3, Ch. 694, L. 1989; amd. Sec. 26, Ch. 561, L. 1993; amd. Sec. 15, Ch. 486, L. 1997.

53-2-1104. Establishment of program. (1) There is a program to implement the provisions of Title II-A of the Job Training Partnership Act (29 U.S.C. 1601, et seq.). Except as provided in section 203 of the Job Training Partnership Act (29 U.S.C. 1603), the program must provide employment and training services to economically disadvantaged persons who are eligible to participate in the program.

(2) The program must be administered in accordance with a job training plan that meets the requirements of 53-2-1107 and 53-2-1108 and sections 103 through 105 of the Job Training Partnership Act (29 U.S.C. 1513 through 1515).

History: En. Sec. 4, Ch. 694, L. 1989.

53-2-1105. State job training coordinating council. (1) There is a state job training coordinating council. Members of the council must be appointed by the governor as required under section 122 of the Job Training Partnership Act (29 U.S.C. 1532).

(2) The state job training coordinating council shall perform the functions described in section 122 of the Job Training Partnership Act (29 U.S.C. 1532). The council shall also:

(a) recommend to the governor a statement of specific, measurable goals and objectives for employment and training services that must serve as guidelines for each private industry council in the development of a job training plan;

(b) recommend to the governor criteria for the coordination of employment and training programs as required under 53-2-1109; and

(c) review plans of all governmental agencies providing employment and training services and provide comments and recommendations to the governor, the state legislature, state agencies, and appropriate federal agencies concerning the relevancy and effectiveness of employment and training services provided in Montana.

History: En. Sec. 5, Ch. 694, L. 1989.

53-2-1106. Private industry councils. (1) There is a private industry council in each service delivery area of the state. Each council must be established as required in section 102 of the Job Training Partnership Act (29 U.S.C. 1512).

(2) Each private industry council shall carry out the duties and responsibilities provided in 53-2-1107 and section 103 of the Job Training Partnership Act (29 U.S.C. 1513).

History: En. Sec. 6, Ch. 694, L. 1989.

53-2-1107. Job training plan — requirements. (1) Each private industry council shall prepare for the service delivery area a job training plan that has been prepared in accordance with this part and sections 103 through 105 of the Job Training Partnership Act (29 U.S.C. 1513 through 1515).

(2) Each job training plan must include:

(a) the council's priorities for services and groups to be served within the service delivery area;

(b) procedures to be used in identifying and selecting program participants and in determining and verifying their eligibility;

(c) the type of services and training to be provided, including the estimated cost per participant;

(d) criteria for evaluating the content and quality of services and training;

(e) performance standards as required under 53-2-1108;

(f) procedures for selecting service providers as required under section 107 of the Job Training Partnership Act (29 U.S.C. 1517);

(g) a plan for the coordination of services and training with other programs as required in 53-2-1109;

(h) a procedure for preparing and submitting to the governor an annual report that describes the activities conducted in the service delivery area during the program year and the extent to which activities exceeded or failed to meet the performance standards adopted in the job training plan; and

(i) all other information required under section 104 of the Job Training Partnership Act (29 U.S.C. 1514).

History: En. Sec. 7, Ch. 694, L. 1989; amd. Sec. 38, Ch. 112, L. 1991; amd. Sec. 34, Ch. 349, L. 1993.

53-2-1108. Performance standards. Each job training plan must contain performance standards to measure the effectiveness and operation of the program in the service delivery area. These standards must include a measure of the extent to which programs under Title II-A of the Job Training Partnership Act increase the employment and earnings of public assistance recipients and therefore reduce expenditures for public assistance programs.

History: En. Sec. 8, Ch. 694, L. 1989.

53-2-1109. Coordination of services. The state job training coordinating council shall identify, in coordination with the appropriate state and local agencies, the employment, training, and vocational education needs throughout the state and assess the extent to which employment and training, vocational education, rehabilitation services, public assistance, economic development, and other federal, state, and local programs and services represent a consistent, integrated, and coordinated approach to meeting such needs. In carrying out this coordinating function, the council shall consider state policy set forth in 2-15-101 to eliminate overlapping and duplication of services within state government and in accordance with the provisions of section 121 of the Job Training Partnership Act (29 U.S.C. 1531) and other employment and training programs, including programs and services of public assistance agencies.

History: En. Sec. 9, Ch. 694, L. 1989; amd. Sec. 27, Ch. 561, L. 1993; amd. Sec. 16, Ch. 486, L. 1997.

53-2-1110. Review of job training plans. At least 120 days before the beginning of the first of the 2 program years covered by the job training plan, the governor shall submit the proposed job training plan for review and comment to an appropriate standing committee of each house of the legislature, as required by 29 U.S.C. 1515, or, if the legislature is not in session, the governor shall submit one copy of the proposed job training plan to the speaker of the house of representatives, one copy to the president of the senate, and one copy to the legislative council.

History: En. Sec. 10, Ch. 694, L. 1989; amd. Sec. 1, Ch. 6, L. 1995.

CHAPTER 3

GENERAL RELIEF

Part 1 — General Provisions

53-3-101. Repealed.
53-3-102. Repealed.
53-3-103. Renumbered 53-3-315 by Code Commissioner, 1985.
53-3-104 through 53-3-107. Repealed.
53-3-108. Repealed.
53-3-109. Repealed.

53-3-110. Repealed.
53-3-111. Confidentiality.
53-3-112. Repealed.
53-3-113. Repealed.
53-3-114. Repealed.
53-3-115. Legislative findings.
53-3-116. Indigent assistance — optional county program.
53-3-117 through 53-3-120 reserved.
53-3-121. Repealed.
53-3-122. Repealed.

Part 2 — Eligibility and Application for General Relief (Repealed)

53-3-201. Repealed.
53-3-202. Repealed.
53-3-203. Repealed.
53-3-204. Repealed.
53-3-205. Repealed.
53-3-206. Repealed.
53-3-207 through 53-3-215. Repealed.

**Part 3 — Conditions and Form of Assistance
Liability for Assistance
(Repealed and Terminated)**

53-3-301. Repealed.
53-3-302. Repealed.
53-3-303. Repealed.
53-3-304. Repealed.
53-3-305. Repealed.
53-3-306. Repealed.
53-3-307 through 53-3-311. Repealed.
53-3-312. Terminated.
53-3-313. Repealed.
53-3-314. Repealed.
53-3-315. Repealed.
53-3-316 and 53-3-317 reserved.
53-3-318 through 53-3-328. Repealed.

Part 1
General Provisions

53-3-101. Repealed. Sec. 28, Ch. 670, L. 1985.

History: (1), (3)En. 71-201.1 by Sec. 19, Ch. 121, L. 1974; Sec. 71-201.1, R.C.M. 1947; (2)En. 71-302.2 by Sec. 1, Ch. 225, L. 1974; amd. Sec. 25, Ch. 37, L. 1977; Sec. 71-302, R.C.M. 1947; R.C.M. 1947, 71-201.1, 71-302.2(5).

53-3-102. Repealed. Sec. 28, Ch. 670, L. 1985.

History: En. Sec. 1, Part 2, Ch. 82, L. 1937; R.C.M. 1947, 71-301; amd. Sec. 2, Ch. 199, L. 1979.

53-3-103. Renumbered 53-3-315 by Code Commissioner, 1985.

53-3-104 through 53-3-107. Repealed. Sec. 28, Ch. 670, L. 1985.

Compiler's Comments

Histories of Repealed Sections:

53-3-104. En. Sec. 7, Part 2, Ch. 82, L. 1937; amd. Sec. 6, Ch. 117, L. 1941; amd. Sec. 10, Ch. 199, L. 1951; amd. Sec. 17, Ch. 212, L. 1965; R.C.M. 1947, 71-309.

53-3-105. En. Sec. 6, Part 2, Ch. 82, L. 1937; amd. Sec. 15, Ch. 129, L. 1939; amd. Sec. 5, Ch. 117, L. 1941; amd. Sec. 1, Ch. 155, L.

1947; amd. Sec. 9, Ch. 199, L. 1951; amd. Sec. 1, Ch. 57, L. 1955; amd. Sec. 1, Ch. 86, L. 1957; amd. Sec. 16, Ch. 212, L. 1965; amd. Sec. 29, Ch. 121, L. 1974; amd. Sec. 2, Ch. 225, L. 1974; amd. Sec. 1, Ch. 375, L. 1975; amd. Sec. 30, Ch. 37, L. 1977; amd. Sec. 3, Ch. 379, L. 1977; R.C.M. 1947, 71-308(3).

53-3-106. En. Sec. 3, Part 2, Ch. 82, L. 1937; amd. Sec. 27, Ch. 37, L. 1977; R.C.M. 1947, 71-305.

53-3-107. En. Sec. 4, Part 2, Ch. 82, L. 1937; amd. Sec. 8, Ch. 199, L. 1951; amd. Sec. 27, Ch. 121, L. 1974; amd. Sec. 28, Ch. 37, L. 1977; R.C.M. 1947, 71-306.

53-3-108. Repealed. Sec. 13, Ch. 580, L. 1989.

History: En. Sec. 1, Ch. 670, L. 1985; amd. Sec. 1, Ch. 10, Sp. L. June 1986; amd. Sec. 2, Ch. 451, L. 1989.

53-3-109. Repealed. Sec. 32, Ch. 561, L. 1993.

History: En. Sec. 2, Ch. 670, L. 1985; amd. Sec. 2, Ch. 10, Sp. L. June 1986; amd. Sec. 3, Ch. 451, L. 1989; amd. Sec. 3, Ch. 580, L. 1989; amd. Sec. 1, Ch. 442, L. 1991; amd. Sec. 1, Ch. 578, L. 1991; amd. Sec. 1, Ch. 7, Sp. L. July 1992.

53-3-110. Repealed. Sec. 32, Ch. 561, L. 1993.

History: En. Sec. 16, Ch. 670, L. 1985; amd. Sec. 2, Ch. 435, L. 1993.

53-3-111. Confidentiality. (1) Except as provided in 53-2-211, personal information provided to or obtained by the county welfare department or the department for the purposes of this chapter is confidential.

(2) Except as provided in 53-2-211, disclosure of confidential information concerning applicants for general relief is restricted to purposes directly connected with the administration of programs administered by the department except as otherwise provided in this section.

(3) Confidential information may be released upon written consent of the applicant.

(4) Confidential information concerning an applicant may be released without prior consent if an emergency situation necessitates the release. The applicant must be informed of the release as soon as practicable.

(5) Confidential information may be released without notice or consent for the purpose of fraud investigation, collection of child support, the purposes of 53-2-211, and third-party medical recovery.

(6) Confidential information may be released if directed by a court order.

History: En. Sec. 17, Ch. 670, L. 1985; amd. Sec. 3, Ch. 410, L. 1993.

Cross-References

Right to know, Art II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont Const.

53-3-112. Repealed. Sec. 32, Ch. 561, L. 1993.

History: En. Sec. 9, Ch. 670, L. 1985.

53-3-113. Repealed. Sec. 32, Ch. 561, L. 1993.

History: En. Sec. 18, Ch. 670, L. 1985; amd. Sec. 4, Ch. 451, L. 1989.

53-3-114. Repealed. Sec. 32, Ch. 561, L. 1993.

History: En. Sec. 19, Ch. 670, L. 1985; amd. Sec. 3, Ch. 435, L. 1993.

53-3-115. Legislative findings. (1) The legislature finds that in order to use the limited resources of the state for the purposes of providing public assistance to persons whom it has determined are in need, certain programs must be eliminated and the provision of public assistance programs must be reorganized for more efficient delivery of services.

(2) The legislature finds that county governments are in the best position to efficiently and effectively deliver services for those in need who are not otherwise eligible for similar services provided by the department of public health and human services.

(3) (a) The legislature finds that the needs of persons who are aged, infirm, or misfortunate are adequately and appropriately provided for through the following programs:

(i) medicaid;
(ii) aid for dependent children;
(iii) food stamps;
(iv) commodities; and
(v) low-income energy assistance.

(b) The legislature further finds that the counties may in their discretion provide other programs of public assistance that they determine are appropriate and that may be funded with money derived from the county poor fund mill levy.

(4) The legislature finds that the effects of eliminating the state program of general relief are not known and that the administration and financing of public assistance programs by each county may not provide uniform assistance throughout the state.

History: **En. Sec. 1, Ch. 561, L. 1993; amd. Sec. 428, Ch. 546, L. 1995.**

Cross-References

Families Achieving Independence in Montana (FAIM) financial assistance program, Title 53, ch. 4, part 2.

Medicaid, Title 53, ch.6., part 1.

Home weatherization, Title 90, ch. 4, part 2.

53-3-116. Indigent assistance — optional county program. (1) A county may provide a program of indigent assistance that it determines necessary. The program may include assistance for food, clothing, shelter, transportation, and medical assistance for individuals not eligible for state or federal programs providing similar assistance. A county may provide for the burial, entombment, or cremation of indigents. The indigent assistance program of the county includes:

(a) job search, job training, work-for-assistance, and employment programs; and

(b) health care, preventive care, and wellness programs as determined by the county commissioners.

(2) A county may establish the criteria for determining eligibility for assistance, including but not limited to residency requirements, limits on income and resources, and the amount, scope, and duration of assistance.

(3) A county may deny assistance for a reasonable period if a person has voluntarily left employment without good cause or is discharged due to misconduct.

(4) The program may be funded with money derived from the county poor fund mill levy established in 53-2-322.

(5) A person is indigent for purposes of this subsection if the value of all income and resources available to pay for that person's burial, entombment, or cremation at the time of death is less than the negotiated amount due the funeral home or mortician for an indigent burial. Available income and resources may be determined by the county.

(6) A county may seek reimbursement under 40-6-303, if applicable, for costs paid under this section.

(7) A county may not deduct amounts that may be recovered from an adult child of a deceased indigent or recovered from resources of a deceased indigent from a contract amount due a funeral home or mortician for burial services provided under 7-4-2915 or this section. A funeral home or a mortician that recovers an amount in excess of a contract amount paid under this subsection shall reimburse the county for the amount recovered up to the amount of the contract.

History: En. Sec. 24, Ch. 561, L. 1993; Sec. 53-2-804, MCA 1995; redes. 53-3-116 by Sec. 314(3), Ch. 42, L. 1997.

53-3-117 through 53-3-120 reserved.

53-3-121. Repealed. Sec. 32, Ch. 561, L. 1993.

History: En. Sec. 1, Ch. 580, L. 1989; amd. Sec. 2, Ch. 7, Sp. L. July 1992.

53-3-122. Repealed. Sec. 32, Ch. 561, L. 1993.

History: En. Sec. 2, Ch. 580, L. 1989; amd. Sec. 3, Ch. 7, Sp. L. July 1992.

Part 2

Eligibility and Application for General Relief (Repealed)

53-3-201. Repealed. Sec. 32, Ch. 561, L. 1993.

History: En. 71-302.2 by Sec. 1, Ch. 225, L. 1974; amd. Sec. 25, Ch. 37, L. 1977; R.C.M. 1947, 71-302.2(part); amd. Sec. 4, Ch. 7, Sp. L. July 1992.

53-3-202. Repealed. Sec. 28, Ch. 670, L. 1985.

History: En. Sec. 10, Part 2, Ch. 82, L. 1937; amd. Sec. 12, Ch. 199, L. 1951; R.C.M. 1947, 71-312.

53-3-203. Repealed. Sec. 28, Ch. 670, L. 1985.

History: En. Sec. 11, Part 2, Ch. 82, L. 1937; amd. Sec. 13, Ch. 199, L. 1951; R.C.M. 1947, 71-313.

53-3-204. Repealed. Sec. 28, Ch. 670, L. 1985.

History: En. Subd. (b), Sec. 2, Part 2, Ch. 82, L. 1937; amd. Sec. 12, Ch. 129, L. 1939; amd. Sec. 26, Ch. 37, L. 1977; R.C.M. 1947, 71-303.

53-3-205. Repealed. Sec. 32, Ch. 561, L. 1993.

History: En. Sec. 4, Ch. 670, L. 1985; amd. Sec. 3, Ch. 10, Sp. L. June 1986; amd. Sec. 1, Ch. 614, L. 1987; amd. Sec. 5, Ch. 451, L. 1989; amd. Sec. 5, Ch. 580, L. 1989; amd. Sec. 1, Ch. 585, L. 1989; amd. Secs. 1, 5, Ch. 603, L. 1989; amd. Sec. 5, Ch. 7, Sp. L. July 1992; amd. Sec. 28, Ch. 561, L. 1993.

53-3-206. Repealed. Sec. 24, Ch. 7, Sp. L. July 1992.

History: En. Sec. 5, Ch. 670, L. 1985; amd. Sec. 4, Ch. 10, Sp. L. June 1986; amd. Sec. 6, Ch. 451, L. 1989; amd. Sec. 6, Ch. 580, L. 1989; amd. Sec. 2, Ch. 585, L. 1989; amd. Sec. 2, Ch. 603, L. 1989; amd. Sec. 2, Ch. 442, L. 1991.

53-3-207 through 53-3-215. Repealed. Sec. 32, Ch. 561, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

53-3-207. (1)En. Sec. 1, Ch. 138, L. 1985; (2)En. Sec. 8, Ch. 670, L. 1985; amd. Sec. 1, Ch. 456, L. 1987.

53-3-208. En. Sec. 12, Ch. 670, L. 1985.

53-3-209. En. Sec. 10, Ch. 670, L. 1985; amd. Sec. 5, Ch. 10, Sp. L. June 1986; amd. Sec. 7, Ch. 451, L. 1989; amd. Sec. 7, Ch. 580, L. 1989; amd. Sec. 6, Ch. 7, Sp. L. July 1992.

53-3-210. En. Sec. 2, Ch. 456, L. 1987.

53-3-211. En. Sec. 1, Ch. 563, L. 1989; amd. Sec. 7, Ch. 7, Sp. L. July 1992.

53-3-212. En. Sec. 2, Ch. 563, L. 1989; amd. Sec. 8, Ch. 7, Sp. L. July 1992.

53-3-213 and 53-3-214 reserved.

53-3-215. En. Sec. 4, Ch. 580, L. 1989; amd. Sec. 9, Ch. 7, Sp. L. July 1992.

Part 3

Conditions and Form of Assistance Liability for Assistance (Repealed and Terminated)

53-3-301. Repealed. Sec. 28, Ch. 670, L. 1985.

History: En. Sec. 12, Part 2, Ch. 82, L. 1937; amd. Sec. 1, Ch. 47, L. 1949; amd. Sec. 14, Ch. 199, L. 1951; amd. Sec. 32, Ch. 37, L. 1977; R.C.M. 1947, 71-314; amd. Sec. 1, Ch. 4, Sp. L. 1981; amd. Sec. 16, Ch. 651, L. 1983.

53-3-302. Repealed. Sec. 28, Ch. 670, L. 1985.

History: En. Sec. 5, Part 2, Ch. 82, L. 1937; amd. Sec. 13, Ch. 129, L. 1939; amd. Sec. 1, Ch. 180, L. 1963; amd. Sec. 28, Ch. 121, L. 1974; amd. Sec. 1, Ch. 208, L. 1974; amd. Sec. 29, Ch. 37, L. 1977; R.C.M. 1947, 71-307(part); amd. Sec. 2, Ch. 4, Sp. L. 1981.

53-3-303. Repealed. Sec. 32, Ch. 561, L. 1993.

History: En. Sec. 5, Part 2, Ch. 82, L. 1937; amd. Sec. 13, Ch. 129, L. 1939; amd. Sec. 1, Ch. 180, L. 1963; amd. Sec. 28, Ch. 121, L. 1974; amd. Sec. 1, Ch. 208, L. 1974; amd. Sec. 29, Ch. 37, L. 1977; R.C.M. 1947, 71-307(part); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 579, L. 1989; amd. Sec. 10, Ch. 7, Sp. L. July 1992.

53-3-304. Repealed. Sec. 32, Ch. 561, L. 1993.

History: En. Sec. 5, Part 2, Ch. 82, L. 1937; amd. Sec. 13, Ch. 129, L. 1939; amd. Sec. 1, Ch. 180, L. 1963; amd. Sec. 28, Ch. 121, L. 1974; amd. Sec. 1, Ch. 208, L. 1974; amd. Sec. 29, Ch. 37, L. 1977; R.C.M. 1947, 71-307(part); amd. Sec. 17, Ch. 651, L. 1983; amd. Sec. 1, Ch. 10, Sp. L. March 1986; amd. Sec. 2, Ch. 614, L. 1987; amd. Sec. 8, Ch. 451, L. 1989; amd. Sec. 8, Ch. 580, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1, Ch. 701, L. 1989; amd. Sec. 11, Ch. 7, Sp. L. July 1992.

53-3-305. Repealed. Sec. 32, Ch. 561, L. 1993.

History: En. Sec. 5, Part 2, Ch. 82, L. 1937; amd. Sec. 13, Ch. 129, L. 1939; amd. Sec. 1, Ch. 180, L. 1963; amd. Sec. 28, Ch. 121, L. 1974; amd. Sec. 1, Ch. 208, L. 1974; amd. Sec. 29, Ch. 37, L. 1977; R.C.M. 1947, 71-307(3); amd. Sec. 2, Ch. 10, Sp. L. March 1986; amd. Sec. 2, Ch. 579, L. 1989; amd. Sec. 12, Ch. 7, Sp. L. July 1992.

53-3-306. Repealed. Sec. 28, Ch. 670, L. 1985.

History: En. 71-302.2 by Sec. 1, Ch. 225, L. 1974; amd. Sec. 25, Ch. 37, L. 1977; R.C.M. 1947, 71-302.2(part); amd. Sec. 2, Ch. 450, L. 1979.

53-3-307 through 53-3-311. Repealed. Sec. 32, Ch. 561, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

53-3-307. En. 71-302.2 by Sec. 1, Ch. 225, L. 1974; amd. Sec. 25, Ch. 37, L. 1977; R.C.M. 1947, 71-302.2(part); amd. Sec. 26, Ch. 670, L. 1985; amd. Sec. 13, Ch. 7, Sp. L. July 1992.

53-3-308. En. Sec. 3, Ch. 670, L. 1985; amd. Sec. 9, Ch. 580, L. 1989; amd. Sec. 69, Ch. 10, L. 1993.

53-3-309. En. Sec. 11, Ch. 670, L. 1985; amd. Sec. 9, Ch. 451, L. 1989.

53-3-310. En. Sec. 14, Ch. 670, L. 1985; amd. Sec. 3, Ch. 442, L. 1991; amd. Sec. 14, Ch. 7, Sp. L. July 1992; amd. Sec. 29, Ch. 561, L. 1993.

53-3-311. En. Sec. 15, Ch. 670, L. 1985; amd. Sec. 10, Ch. 451, L. 1989; amd. Sec. 3, Ch. 585, L. 1989; amd. Sec. 3, Ch. 603, L. 1989; amd. Sec. 15, Ch. 7, Sp. L. July 1992.

53-3-312. Terminated. Sec. 30, Ch. 670, L. 1985.

History: En. Sec. 7, Ch. 670, L. 1985.

53-3-313. Repealed. Sec. 32, Ch. 561, L. 1993.

History: En. Sec. 6, Ch. 670, L. 1985; amd. Sec. 12, Ch. 580, L. 1989.

53-3-314. Repealed. Sec. 32, Ch. 561, L. 1993.

History: En. Sec. 13, Ch. 670, L. 1985.

53-3-315. Repealed. Sec. 4, Ch. 482, L. 1989.

History: En. Sec. 6, Part 2, Ch. 82, L. 1937; amd. Sec. 15, Ch. 129, L. 1939; amd. Sec. 5, Ch. 117, L. 1941; amd. Sec. 1, Ch. 155, L. 1947; amd. Sec. 9, Ch. 199, L. 1951; amd. Sec. 1, Ch. 57, L. 1955; amd. Sec. 1, Ch. 86, L. 1957; amd. Sec. 16, Ch. 212, L. 1965; amd. Sec. 29, Ch. 121, L. 1974; amd. Sec. 2, Ch. 225, L. 1974; amd. Sec. 1, Ch. 375, L. 1975; amd. Sec. 30, Ch. 37, L. 1977; amd. Sec. 3, Ch. 379, L. 1977; R.C.M. 1947, 71-308(1), (2), (4), (5); amd. Sec. 4, Ch. 38, L. 1979; amd. Sec. 1, Ch. 707, L. 1979; amd. Sec. 1, Ch. 325, L. 1981; amd. Sec. 2, Ch. 535, L. 1985; amd. Sec. 25, Ch. 670, L. 1985; Sec. 53-3-103, MCA 1983; redes. 53-3-315 by Code Commissioner, 1985.

53-3-316 and 53-3-317 reserved.

53-3-318 through 53-3-328. Repealed. Sec. 32, Ch. 561, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

53-3-318. En. Sec. 4, Ch. 442, L. 1991.

53-3-319 and 53-3-320 reserved.

53-3-321. En. Sec. 10, Ch. 580, L. 1989; amd. Sec. 16, Ch. 580, L. 1989; amd. Sec. 12, Ch. 701, L. 1989; amd. Sec. 45, Ch. 16, L. 1991; amd. Sec. 16, Ch. 7, Sp. L. July 1992.

53-3-322. En. Sec. 2, Ch. 701, L. 1989; amd. Sec. 17, Ch. 7, Sp. L. July 1992.

53-3-323. En. Sec. 3, Ch. 701, L. 1989; amd. Sec. 18, Ch. 7, Sp. L. July 1992.

53-3-324. En. Sec. 4, Ch. 701, L. 1989; amd. Sec. 19, Ch. 7, Sp. L. July 1992.

53-3-325. En. Sec. 5, Ch. 701, L. 1989; amd. Sec. 20, Ch. 7, Sp. L. July 1992.

53-3-326. En. Sec. 6, Ch. 701, L. 1989; amd. Sec. 21, Ch. 7, Sp. L. July 1992.

53-3-327. En. Sec. 7, Ch. 701, L. 1989; amd. Sec. 22, Ch. 7, Sp. L. July 1992.

53-3-328. En. Sec. 2, Ch. 578, L. 1991; amd. Sec. 23, Ch. 7, Sp. L. July 1992.

CHAPTER 4

CHILDREN'S SERVICES

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Chapter Cross-References

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Sections Renumbered and Repealed:

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53-4-102. Renumbered 52-2-102.

53-4-103 through 53-4-110 reserved.

53-4-111. Renumbered 52-2-111.

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53-4-117. Renumbered 52-2-117.

53-4-118. Renumbered 52-2-118.

53-4-119 and 53-4-120 reserved.

53-4-121. Repealed. Sec. 112, Ch. 609, L. 1987.

53-4-122. Repealed. Sec. 112, Ch. 609, L. 1987.

Histories of Repealed Sections:

53-4-121. En. Sec. 5, Part 6, Ch. 82, L. 1937; R.C.M. 1947, 71-714(part).

53-4-122. En. Sec. 5, Part 6, Ch. 82, L. 1937; R.C.M. 1947, 71-714(part).

Part 2

Families Achieving Independence in Montana (FAIM) Financial Assistance Program

Part Cross-References

Institutions and assistance, Art. XII, sec. 3, Mont. Const.

Medical assistance — Medicaid, Title 53, ch. 6, part 1.

53-4-201. Definitions. As used in part 6 and this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) (a) "Dependent child", for public assistance purposes, means:

(i) a child under 18 years of age; or

(ii) a person under 19 years of age who is a student, as defined by the department by rule.

(b) The person described in subsection (2)(a)(i) or (2)(a)(ii) must be living with a specified caretaker relative, as defined by the department by rule.

(3) "FAIM financial assistance" means the program that provides participants in the job supplement program, pathways program, and

community services program of the FAIM project with benefits that may include cash, services, and noncash assistance.

(4) "FAIM project" means the families achieving independence in Montana project as established in 53-4-601.

(5) "Family" means a group of people who live with a dependent child, each of whom is related to the dependent child by blood, marriage, or adoption or by law, such as:

(a) a parent, including a natural or adoptive parent, a stepparent, or a person considered by law to be a parent in the case of a child conceived by artificial insemination; or

(b) a sibling.

(6) "Federal poverty level" means the measure of indigence established annually by the U.S. office of management and budget.

(7) "Public assistance" or "assistance" means a type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance.

(8) "Specified caretaker relative" means a person within a degree of kinship to the dependent child, as specified by department rule, who lives with the child and exercises care and control over the child.

(9) "State plan" means the policies and procedures governing the state of Montana's FAIM financial assistance program and other programs funded by temporary assistance for needy families. It is prepared by the department and certified by the federal agency that provides funding for those programs.

(10) "Temporary assistance for needy families" means the federal block grant that funds FAIM financial assistance and other programs to strengthen and preserve families pursuant to Title IV of the Social Security Act, 42 U.S.C. 601, et seq., as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

History: (1)En. Subd. (a), Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 17, Ch. 129, L. 1939; amd. Sec. 7, Ch. 213, L. 1943; amd. Sec. 4, Ch. 71, L. 1957; amd. Sec. 2, Ch. 255, L. 1965; amd. Sec. 1, Ch. 373, L. 1971; amd. Sec. 30, Ch. 121, L. 1974; amd. Sec. 1, Ch. 309, L. 1974; amd. Sec. 33, Ch. 37, L. 1977; Sec. 71-501, R.C.M. 1947; (2)En. Subd. (b), Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 21, Ch. 199, L. 1951; amd. Sec. 5, Ch. 71, L. 1957; amd. Sec. 1, Ch. 292, L. 1971; Sec. 71-502, R.C.M. 1947; (3), (4)En. 71-201.1 by Sec. 19, Ch. 121, L. 1974; Sec. 71-201.1, R.C.M. 1947; R.C.M. 1947, 71-201.1, 71-501(1), 71-502; amd. Sec. 1, Ch. 2, Sp. L. 1981; amd. Sec. 1, Ch. 53, L. 1985; amd. Sec. 155, Ch. 370, L. 1987; amd. Sec. 4, Ch. 266, L. 1989; amd. Sec. 17, Ch. 491, L. 1995; amd. Sec. 429, Ch. 546, L. 1995; amd. Sec. 17, Ch. 486, L. 1997.

Cross-References

Youth — declaration of policy, 41-3-101.

53-4-202. FAIM financial assistance to be in effect in all counties. (1) It is mandatory and required that the state plan and programs described in the state plan must be in effect in each county of the state.

(2) It is not required that the programs funded under the temporary assistance for needy families block grant be uniformly administered in each county of the state, provided that it is administered in accordance with all requirements of the state plan and federal law. The department may also administer demonstration programs pursuant to section 1115 of the Social Security Act, 42 U.S.C. 1315, or any other provision of that act that permits the states to administer experimental, pilot, or demonstration projects.

(3) An enrolled member of an Indian tribe participating in a program that is funded by the temporary assistance for needy families block grant administered by the state of Montana must be subject to the same rules, policies, and requirements as all other applicants for and recipients of benefits funded by the temporary assistance for needy families block grant.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(c); amd. Sec. 155, Ch. 370, L. 1987; amd. Sec. 18, Ch. 491, L. 1995; amd. Sec. 18, Ch. 486, L. 1997.

53-4-203. Repealed. Sec. 3, Ch. 200, L. 1995.

History: En. Sec. 1, Ch. 703, L. 1989.

53-4-204 through 53-4-209 reserved.

53-4-210. Tribal family assistance plan. (1) As used in this section, "Indian tribe" means an Indian tribe that has a federally recognized governing body carrying out substantial governmental duties and powers over any area.

(2) The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 612, authorizes an Indian tribe or a combination of tribes to request federal approval to implement a tribal family assistance plan.

(3) If a Montana Indian tribe or a combination of tribes receives approval to implement a tribal family assistance plan and chooses to base their share of the federal temporary assistance for needy families block grant on the same federal fiscal year 1994 service population as they plan to serve under their tribal family assistance plan, the legislature shall continue to provide the Indian tribe or combination of tribes with a proportionate state share for cash benefits based on the maintenance of effort level established by the legislature for that biennium or the maintenance of effort level set in statute.

(4) The Indian tribe or combination of tribes retain eligibility to form a partnership with the department and share funding for approved special projects related to welfare reform.

(5) The department shall provide the Indian tribe or combination of tribes with a reasonable level of technical assistance in the form of eligibility and case management training, policy interpretation, and automated system background information. The technical assistance must be provided at no cost to the Indian tribe or combination of tribes for a period of 1 year after the inception of the tribal family assistance plan. After 1 year, the Indian tribe or combination of tribes may contract with the department for continued technical assistance.

(6) The tribe or combination of tribes may contract with the department for the provision of participant services or associated administrative functions that the tribe and the department find appropriate.

(7) The department shall transfer to each new tribal family assistance plan after April 28, 1999, $100,000 of general fund money from existing general fund appropriation authority for each of the fiscal years of the succeeding biennium for the use of each tribe implementing a family assistance plan.

History: En. Sec. 1, Ch. 509, L. 1999.

Compiler's Comments

Effective Date: Section 4, Ch. 509, L. 1999, provided that this section is effective on passage and approval. Approved April 28, 1999.

53-4-211. Administration of programs funded under temporary assistance for needy families block grant. (1) The department is authorized and is charged with the general administration and supervision of programs funded under the temporary assistance for needy families block grant under the powers, duties, and functions as prescribed in chapter 2 of this title.

(2) The state of Montana shall maintain a fiscal effort equivalent to at least 77% of its historic state expenditures, as defined in 42 U.S.C. 609(a)(7)(B)(iii), governing maintenance of effort necessary to draw down the temporary assistance to needy families block grant.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(a); amd. Sec. 155, Ch. 370, L. 1987; amd. Sec. 19, Ch. 486, L. 1997; amd. Sec. 2, Ch. 341, L. 1999; amd. Sec. 1, Ch. 567, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapters 341 and 567 in (2) substituted "77% of its historic state expenditures, as defined in 42 U.S.C. 609(a)(7)(B)(iii), governing maintenance" for "80% of the federally calculated maintenance". Chapter 341 amendment effective July 1, 1999, and terminates June 30, 2001. Termination date rendered void by Ch. 567 amendment. Chapter 567 amendment effective May 5, 1999.

53-4-212. Department to make rules. (1) The department shall make rules and take action as necessary or desirable for the administration of the FAIM financial assistance program and other programs funded under the temporary assistance for needy families block grant.

(2) The department shall adopt rules that may include but are not limited to rules concerning:

(a) eligibility requirements, including gross and net income limitations, resource limitations, and income and resource exclusions;

(b) amounts of assistance and methods for computing benefit amounts;

(c) the degree of kinship required for a person to qualify as a specified caretaker relative in order to be eligible for assistance;

(d) procedures and policies for employment and training programs,requirements for participation in employment and training programs, and exemptions, if any, from participation requirements;

(e) requirements for specified caretaker relatives participating in the community services program, including the number of hours of community service work per month and other terms of performance;

(f) eligibility for and terms and conditions of child-care assistance for FAIM project participants, including maximum amounts of assistance payable and amounts of copayments required by specified caretaker relatives;

(g) maximum amounts of one-time only cash payments for special employment-related needs and the length of time that a family is required to remain off cash assistance after a payment is received;

(h) exemptions from time limits in pathways and the community services program;

(i) terms of a specified caretaker relative's or other family member's ineligibility for assistance because of failure to enter into a family investment agreement or to comply with the individual's obligations under the agreement, including the length of the period of ineligibility;

(j) requirements, if any, for participation in and exemptions from participation in and procedures and policies of the employment and training demonstration project;

(k) eligibility for and terms and conditions of extended child-care and medical assistance benefits;

(l) reporting requirements;

(m) sanctions, disqualification, or other penalties for failure to comply with the program rules or requirements;

(n) exemptions from the 60-month limitation on assistance provided in 53-4-231 based on hardship or for families that include an individual who has been battered or subjected to extreme cruelty, as defined in section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608, including but not limited to the duration of the exemption;

(o) individuals who must be included as members of an assistance unit;

(p) categories of aliens who may receive assistance, if any;

(q) requirements relating to the assignment of child and medical support rights and cooperation in establishing paternity and obtaining child and medical support;

(r) requirements for eligibility and other terms and conditions of other programs to strengthen and preserve families;

(s) special eligibility or participation requirements applicable to teenage parents, if any; and

(t) conditions under which assistance may be continued when a dependent child is temporarily absent from the home and the length of time for which assistance may be continued.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(part (e)); amd. Sec. 19, Ch. 491, L. 1995; amd. Sec. 20, Ch. 486, L. 1997.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-4-213. Department rules binding on county welfare departments. All rules of the department made under this part shall be binding upon the county departments of public welfare.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(part (e)); amd. Sec. 5, Ch. 38, L. 1979.

53-4-214. Distribution of copies of law and forms by department. The department shall have printed and shall distribute copies of this part to all county welfare departments and shall prescribe the form of and print and supply to the county welfare department blanks of applications, reports, and other forms that may be necessary in relation to the FAIM financial assistance and other programs funded under the temporary assistance for needy families block grant.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(d); amd. Sec. 155, Ch. 370, L. 1987; amd. Sec. 21, Ch. 486, L. 1997.

53-4-215. Cooperation with federal government. The department shall cooperate with the federal government in matters of mutual concern pertaining to assistance to dependent children, including the adoption of such methods of administration as are found by the federal government to be necessary for the efficient operation of the plan for such assistance.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(f).

53-4-216. Reports to federal government. The department shall make such reports in such form and containing such information as the federal government may from time to time require and comply with such provisions as the federal government may from time to time find necessary to assure the correctness and verification of such reports.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(g).

53-4-217. Repealed. Sec. 3, Ch. 370, L. 1989.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(h).

53-4-218 through 53-4-220 reserved.

53-4-221. County department charged with local administration. The county department of public welfare is charged with the local administration and supervision of programs funded under the temporary assistance for needy families block grant, subject to the powers, duties, and functions prescribed for the county department in chapter 2 of this title.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(b); amd. Sec. 155, Ch. 370, L. 1987; amd. Sec. 22, Ch. 486, L. 1997.

53-4-222. County administration subject to rules prescribed by department. The county department of public welfare shall administer the provisions of this part in the respective counties subject to the rules prescribed by the department of public health and human services pursuant to the provisions of this part.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(i); amd. Sec. 431, Ch. 546, L. 1995.

Cross-References

State assumption of county public assistance programs, Title 53, ch. 2, part 8.

53-4-223. Repealed. Sec. 8, Ch. 266, L. 1989.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(j); amd. Sec. 155, Ch. 370, L. 1987.

53-4-224 through 53-4-230 reserved.

53-4-231. Eligibility. (1) Subject to the provisions of subsections (2) through (5), assistance may be granted under this part to:

(a) a dependent child;

(b) a specified caretaker relative or relatives, including but not limited to the natural or adoptive parents of a dependent child;

(c) the stepparent of a dependent child who lives with the child and the child's natural or adoptive parent;

(d) persons under 18 years of age who live in the home with a dependent child, including but not limited to siblings related to the dependent child by blood, marriage, or adoption or by law;

(e) a needy pregnant woman with no other children who is receiving payments. Payments may begin no earlier than the third month prior to the month in which the child is expected to be born.

(2) Persons who are not citizens of the United States are eligible for assistance only as provided in sections 401 through 435 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as codified in Title 8 of the United States Code.

(3) The following are not eligible for assistance:

(a) persons who are receiving supplemental security income payments under the Social Security Act;

(b) a dependent child who is or is expected to be absent from the home of the specified caretaker relative continuously for a period of time prescribed by the department by rule;

(c) a specified caretaker relative who fails to comply with requirements for reporting the absence of a dependent child from the specified caretaker relative's home as prescribed by the department by rule;

(d) families in which the specified caretaker relative fails or refuses to assign child and medical support rights to the department or to cooperate in establishing paternity or obtaining child or medical support as required by the department by rule;

(e) teenage parents who fail or refuse to attend secondary school or another training program as required by the department by rule;

(f) teenage parents who are not living in an adult-supervised setting as defined by the department by rule;

(g) a fugitive felon or probation or parole violator as defined in section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608;

(h) individuals who have fraudulently misrepresented their place of residence, as defined in section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608, for a period of 10 years beginning on the date of conviction; and

(i) an individual convicted after August 22, 1996, of any offense that is classified as a felony and that has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substance Act, 21 U.S.C. 802(6).

(4) A family is not eligible for assistance if the family includes an adult who has received assistance in a program funded under the temporary assistance for needy families block grant in any state or states for 60 months or more, whether or not the months are consecutive, except as provided by the department by rule in accordance with section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608.

(5) This part may not be interpreted to entitle any individual or family to assistance under programs funded by the temporary assistance for needy families block grant.

History: En. Sec. 3, Part 4, Ch. 82, L. 1937; Subds. (d) and (e) rep. Sec. 9, Ch. 213, L. 1943; amd. Sec. 1, Ch. 148, L. 1947; amd. Sec. 1, Ch. 50, L. 1949; amd. Sec. 22, Ch. 199, L. 1951; amd. Sec. 1, Ch. 90, L. 1971; R.C.M. 1947, 71-504; amd. Sec. 3, Ch. 450, L. 1979; amd. Sec. 1, Ch. 10, Sp. L. 1981; (3)En. Secs. 2, 3, Ch. 53, L. 1985; amd. Sec. 155, Ch. 370, L. 1987; amd. Sec. 1, Ch. 403, L. 1987; amd. Sec. 23, Ch. 486, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Fraudulently obtaining public assistance — theft, 53-2-107.

53-4-232. Application for assistance. Application for assistance under this part shall be made to the county department of the county in which the dependent child is residing. Such application shall be made by the relative with whom the child is living or will live. One application may be made for several children of the same family if they reside with the same person. All individuals wishing to make application for this assistance shall have the opportunity to do so.

History: En. Sec. 4, Part 4, Ch. 82, L. 1937; amd. Sec. 3, Ch. 213, L. 1943; amd. Sec. 23, Ch. 199, L. 1951; R.C.M. 1947, 71-505.

53-4-233. Investigation of applications. Whenever a county department receives an application for assistance under this part, an investigation must be promptly made by the county department of public welfare. Each applicant must be informed of the applicant's right to a fair hearing and of the confidential nature of information secured. Upon completion of an investigation, aid must be furnished promptly to all eligible persons. Each applicant must receive written notice of the decision concerning the applicant's request for assistance.

History: En. Sec. 5, Part 4, Ch. 82, L. 1937; amd. Sec. 24, Ch. 199, L. 1951; R.C.M. 1947, 71-506; amd. Sec. 155, Ch. 370, L. 1987; amd. Sec. 5, Ch. 266, L. 1989; amd. Sec. 24, Ch. 486, L. 1997.

Cross-References

Abused, neglected, and dependent children — action on reporting, 41-3-202.

53-4-234. Repealed. Sec. 2, Ch. 2, Sp. L. 1981.

History: En. Subd. (a), Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 17, Ch. 129, L. 1939; amd. Sec. 7, Ch. 213, L. 1943; amd. Sec. 4, Ch. 71, L. 1957; amd. Sec. 2, Ch. 255, L. 1965; amd. Sec. 1, Ch. 373, L. 1971; amd. Sec. 30, Ch. 121, L. 1974; amd. Sec. 33, Ch. 37, L. 1977; R.C.M. 1947, 71-501(2).

53-4-235. Repealed. Sec. 2, Ch. 2, Sp. L. 1981.

History: En. Subd. (a), Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 17, Ch. 129, L. 1939; amd. Sec. 7, Ch. 213, L. 1943; amd. Sec. 4, Ch. 71, L. 1957; amd. Sec. 2, Ch. 255, L. 1965; amd. Sec. 1, Ch. 373, L. 1971; amd. Sec. 30, Ch. 121, L. 1974; amd. Sec. 33, Ch. 37, L. 1977; R.C.M. 1947, 71-501(3).

53-4-236. Repealed. Sec. 2, Ch. 2, Sp. L. 1981.

History: En. Subd. (a), Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 17, Ch. 129, L. 1939; amd. Sec. 7, Ch. 213, L. 1943; amd. Sec. 4, Ch. 71, L. 1957; amd. Sec. 2, Ch. 255, L. 1965; amd. Sec. 1, Ch. 373, L. 1971; amd. Sec. 30, Ch. 121, L. 1974; amd. Sec. 33, Ch. 37, L. 1977; R.C.M. 1947, 71-501(4).

53-4-237. Stepparent resources and income. Notwithstanding the provisions of 40-6-217, in the administration of this part the department may consider the income and resources of stepparents and other individuals who reside in the home as resources and income available to the household.

History: En. Sec. 1, Ch. 3, Sp. L. 1981.

53-4-238 through 53-4-240 reserved.

53-4-241. Amount of assistance determined by department rules. The amount of FAIM financial assistance granted in any case must be determined according to the rules and standards of assistance established by the department.

History: En. Sec. 6, Part 4, Ch. 82, L. 1937; amd. Sec. 25, Ch. 199, L. 1951; R.C.M. 1947, 71-507; amd. Sec. 155, Ch. 370, L. 1987; amd. Sec. 6, Ch. 266, L. 1989; amd. Sec. 20, Ch. 491, L. 1995; amd. Sec. 25, Ch. 486, L. 1997.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-4-242. Periodic reconsideration of assistance. All assistance grants made under this part must be reconsidered as frequently as may be required by the rules of the department of public health and human services.

History: En. Sec. 8, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 47, L. 1959; amd. Sec. 1, Ch. 152, L. 1959; amd. Sec. 1, Ch. 351, L. 1969; amd. Sec. 49, Ch. 121, L. 1974; amd. Sec. 34, Ch. 37, L. 1977; R.C.M. 1947, 71-509(part); amd. Sec. 7, Ch. 266, L. 1989; amd. Sec. 432, Ch. 546, L. 1995.

53-4-243. Repealed. Sec. 3, Ch. 200, L. 1995.

History: En. Sec. 8, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 47, L. 1959; amd. Sec. 1, Ch. 152, L. 1959; amd. Sec. 1, Ch. 351, L. 1969; amd. Sec. 49, Ch. 121, L. 1974; amd. Sec. 34, Ch. 37, L. 1977; R.C.M. 1947, 71-509(part).

53-4-244. Payments to person interested in child's welfare in lieu of special guardianship. In lieu of guardianship proceedings, payments may be made in behalf of the child or children to another person found by the county department to be interested in or concerned with the welfare of the needy child or children in accordance with the rules established by the department of public health and human services.

History: En. Sec. 8, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 47, L. 1959; amd. Sec. 1, Ch. 152, L. 1959; amd. Sec. 1, Ch. 351, L. 1969; amd. Sec. 49, Ch. 121, L. 1974; amd. Sec. 34, Ch. 37, L. 1977; R.C.M. 1947, 71-509(part); amd. Sec. 2, Ch. 398, L. 1981; amd. Sec. 433, Ch. 546, L. 1995.

53-4-245. Payments to Indians not to be decreased because of certain sums received by enrolled tribal members. When federal law or regulations require, any amount received by an enrolled member of a recognized Indian tribe as per capita payments or a share in the profits and receipts from tribal lands and interests or tribal enterprises may not be used to decrease the amount of assistance received under this part.

History: En. Sec. 8, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 47, L. 1959; amd. Sec. 1, Ch. 152, L. 1959; amd. Sec. 1, Ch. 351, L. 1969; amd. Sec. 49, Ch. 121, L. 1974; amd. Sec. 34, Ch. 37, L. 1977; R.C.M. 1947, 71-509(3).

53-4-246. *(Temporary)* **County share of participation.** Except for recipients who are enrolled members of an Indian tribe, for each recipient of cash assistance in the FAIM project, the county where the recipient resides shall reimburse the department 22.5% of the nonfederal share of the approved temporary assistance for needy families grant for the recipient. However, a county is not required to reimburse the department more for temporary assistance for needy families grants for 1 state fiscal year than the dollar amount that the county paid as its share of cash assistance and emergency assistance programs in 1996. For purposes of determining the nonfederal share, the federal share is considered to be equal to the federal medical assistance percentage paid to the states for medicaid benefits under Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq. *(Terminates June 30, 2001—sec. 6, Ch. 341, L. 1999.)*

53-4-246. *(Effective July 1, 2001)* **County share of participation.** Each county where the recipient of FAIM financial assistance resides shall reimburse the department in the amount equal to the percentage of the approved temporary assistance for needy families grants not paid with federal temporary assistance for needy families funds.

History: En. Sec. 7, Part 4, Ch. 82, L. 1937; amd. Sec. 18, Ch. 129, L. 1939; amd. Sec. 1, Ch. 191, L. 1945; amd. Sec. 1, Ch. 71, L. 1947; amd. Sec. 6, Ch. 71, L. 1957; amd. Sec. 1, Ch. 7, L. 1961; amd. Sec. 2, Ch. 292, L. 1971; amd. Sec. 2, Ch. 373, L. 1971; amd. Sec. 2, Ch. 309, L. 1974; R.C.M. 1947, 71-508; amd. Sec. 1, Ch. 413, L. 1979; amd. Sec. 155, Ch. 370, L. 1987; amd. Sec. 434, Ch. 546, L. 1995; amd. Secs. 26, 27, Ch. 486, L. 1997; amd. Sec. 3, Ch. 341, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 341 at beginning of first sentence inserted exception clause, after "department" substituted "22.5% of the nonfederal share" for "in the amount equal to the percentage", and after "families" substituted "grant for the recipient" for "grants not paid with federal temporary assistance for needy families fund"; and inserted second and third sentences providing that a county is not required to reimburse department more for temporary assistance grants for 1 state fiscal year than dollar amount county paid as its share in 1996 and providing that federal share is equal to federal medicare assistance percentage paid to states for medicaid benefits under federal social security law. Amendment effective July 1, 1999, and terminates June 30, 2001.

53-4-247. County liability when recipient moves to another county. A recipient of FAIM financial assistance who moves to another county in the state shall continue to receive assistance. The county that the recipient moves to must be charged by the department for the county share of assistance. The county that a recipient moves from shall notify the county that the recipient moves to.

History: En. Sec. 9, Part 4, Ch. 82, L. 1937; amd. Sec. 26, Ch. 199, L. 1951; R.C.M. 1947, 71-510; amd. Sec. 4, Ch. 450, L. 1979; amd. Sec. 155, Ch. 370, L. 1987; amd. Sec. 28, Ch. 486, L. 1997.

Cross-References

Residence — rules for determining, 1-1-215.

53-4-248. Parents liable to department for public assistance payments. (1) A payment of public assistance money made to or for the benefit of a dependent child creates a debt due and owing to the department by the natural or adoptive parents who are legally responsible for the support of the child by statute or court decree in an amount equal to the amount of public assistance paid. However, where the support obligation is based upon a court decree, the debt is limited to the amount of the court decree.

(2) The department is subrogated to the right of the child or person having the care, custody, and control of the child to prosecute any support action or execute any administrative remedy existing under the laws of the state to obtain reimbursement of any money expended. If a court decree enters judgment for an amount of support to be paid by an obligor parent, the department is subrogated to the debt created by the order and the money judgment is in favor of the department. An obligee may not commence an action to recover support due and owing to the obligee without first filing an affidavit with the court stating whether the obligee has received public assistance from any source and, if the obligee has received public assistance, that the obligee has notified the department in writing of the pending action.

(3) A debt arising under this section may not be incurred by or collected from a parent or other person while the parent or other person is the recipient of public assistance money for the benefit of minor dependent children.

(4) The remedies provided in this section are in addition to and not in lieu of existing common law and statutory law.

(5) The department or its legal representatives may, at any time consistent with the income, earning capacity, and resources of the debtor, petition the court having jurisdiction over the particular case to set or reset a level and schedule of payments to be paid upon the debt.

History: En. 71-511 by Sec. 1, Ch. 368, L. 1974; amd. Sec. 4, Ch. 379, L. 1977; R.C.M. 1947, 71-511; amd. Sec. 29, Ch. 486, L. 1997.

Cross-References

State administrative collection of child support, Title 40, ch. 5, part 2.

Deduction from wages for owed child support, Title 40, ch. 5, part 3.

When parent liable for necessaries supplied to child, 40-6-215.

53-4-249. Repealed. Sec. 51, Ch. 486, L. 1997.

History: En. Sec. 1, Ch. 200, L. 1995.

Part 3

Subsidized Adoption (Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered and Repealed:

53-4-301. Renumbered 52-2-501.
53-4-302. Renumbered 52-2-502.
53-4-303. Renumbered 52-2-503.
53-4-304. Renumbered 52-2-504.
53-4-305. Repealed. Sec. 1, Ch. 354, L. 1989.
53-4-306. Renumbered 52-2-505.
53-4-307. Renumbered 52-2-506.
53-4-308. Renumbered 52-2-507.
53-4-309. Renumbered 52-2-508.
53-4-310. Renumbered 52-2-509.
53-4-311. Renumbered 52-2-510.

Histories of Repealed Sections:

53-4-305. En. 71-1812 by Sec. 7, Ch. 434, L. 1977; R.C.M. 1947, 71-1812.

Part 4

Child Adoption Agencies (Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered:

53-4-401. Renumbered 52-2-401.
53-4-402. Renumbered 52-2-402.
53-4-403. Renumbered 52-2-403.
53-4-404. Renumbered 52-2-404.
53-4-405. Renumbered 52-2-405.
53-4-406. Renumbered 52-2-406.
53-4-407. Renumbered 52-2-407.

Part 5

Child Day-Care Centers (Renumbered by Code Commissioner, 1989)

Part Compiler's Comments

Sections Renumbered and Repealed:

53-4-501. Renumbered 52-2-702(1) and 52-2-703.
53-4-502. Renumbered 52-2-721.
53-4-503. Renumbered 52-2-704(2)(d) through (2)(g).
53-4-504. Renumbered 52-2-731.
53-4-505. Renumbered 52-2-734.
53-4-506. Renumbered 52-2-735.
53-4-507. Renumbered 52-2-722.
53-4-508. Renumbered 52-2-723.
53-4-509. Renumbered 52-2-724.
53-4-510. Renumbered 52-2-725.
53-4-511. Renumbered 52-2-733.
53-4-512. Renumbered 52-2-732.

53-4-513. Renumbered 52-2-726.
53-4-514. Renumbered 52-2-713.
53-4-515. Renumbered 52-2-741.
53-4-516. Repealed. Sec. 1, Ch. 162, L. 1981.

Histories of Repealed Sections:
53-4-516. En. Secs. 1, 3, Ch. 637, L. 1979; amd. Sec. 17, Ch. 606, L. 1981.

Part 6

Families Achieving Independence in Montana (FAIM)

53-4-601. Demonstration project — purpose. (1) The department is authorized to administer a demonstration project pursuant to section 1115 of the Social Security Act, 42 U.S.C. 1315, to provide assistance under Title IV of that act, 42 U.S.C. 601, et seq., to families who are currently receiving, eligible for, or at risk of becoming eligible for FAIM financial assistance. This demonstration project may be cited as the families achieving independence in Montana (FAIM) project.

(2) The purpose of the demonstration project is to promote self-sufficiency and responsibility of participants by providing supports and incentives, such as child-care assistance, training, education, medical assistance, and resource referrals, and to make procedures and requirements less complex and more uniform in the FAIM financial assistance, food stamp, and medicaid programs.

History: En. Sec. 1, Ch. 491, L. 1995; amd. Sec. 30, Ch. 486, L. 1997.

53-4-602. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Cash assistance" means monetary payments to a recipient of FAIM financial assistance to meet basic needs, such as shelter, utilities, clothing, and personal needs.

(2) "Child-care assistance" means payments to or on behalf of the specified caretaker relative of a dependent child to defray the cost of having a third party care for the child.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "FAIM project" means the families achieving independence in Montana project, including a FAIM financial assistance part established in 53-4-603, a food stamp part administered under the Food Stamp Act of 1977, 7 U.S.C. 2026, and a medicaid part administered pursuant to the Social Security Act, 42 U.S.C. 1315.

History: En. Sec. 2, Ch. 491, L. 1995; amd. Sec. 31, Ch. 486, L. 1997.

53-4-603. FAIM project — components. (1) The FAIM financial assistance part of the FAIM project consists of three components referred to as the job supplement program, pathways, and the community services program.

(2) The job supplement program is an alternative to the components of the FAIM project that provide cash assistance. An eligible family may receive assistance under the job supplement program instead of receiving assistance under pathways or the community services program or may receive assistance under the job supplement program either prior to or after receiving assistance under pathways or the community services program.

(3) Services that may be provided to eligible individuals in the job supplement program include:

(a) full medicaid benefits for dependent children, as provided in 53-6-101, and basic medicaid benefits for specified caretaker relatives, as provided in 53-6-101, pursuant to waivers of federal law that are granted by the secretary of the U.S. department of health and human services that permit limited benefits. However, a specified caretaker relative who is pregnant is entitled to full medicaid benefits.

(b) child-care assistance, as provided in 53-4-611 and as specified by the department by rule;

(c) assistance in obtaining child support; and

(d) a one-time only cash payment to meet special employment-related needs of the family. In order to receive a one-time cash payment, the family is required to agree not to receive cash assistance for a period of time based on the size of the one-time cash payment received.

(4) (a) Pathways may provide eligible individuals with job training and education; resource referrals; assistance in obtaining child support; one-time cash payments for special employment-related needs; child-care assistance, as provided in 53-4-611 and as specified by department rule; cash assistance payments; supportive services, if funding is available; full medicaid benefits for dependent children, as provided in 53-6-101; and basic medicaid benefits for specified caretaker relatives, as provided in 53-6-101, pursuant to waivers of federal law that are granted by the secretary of the U.S. department of health and human services that permit limited benefits. However, a specified caretaker relative who is pregnant is entitled to full medicaid benefits.

(b) A specified caretaker relative in either a single-parent family or a two-parent family may receive assistance under pathways for a maximum of 24 months, subject to the time limitation on assistance provided in 53-4-231. The 24 months do not need to be consecutive.

(5) (a) In the community services program, a specified caretaker relative who has received 24 months of assistance under pathways may continue to receive assistance for the specified caretaker relative's needs for an additional 36 months or longer period, as specified by department rule, if the specified caretaker relative performs community service work as required by the department, subject to the time limitation on assistance provided in 53-4-231.

(b) A specified caretaker relative who performs community service work as required is entitled to cash assistance for the specified caretaker relative's needs and basic medicaid benefits, as provided in 53-6-101, pursuant to waivers of federal law that are granted by the secretary of the U.S. department of health and human services that permit limited benefits. However, a specified caretaker relative who is pregnant is entitled to full medicaid benefits.

(c) Job training and education, resource referrals, and assistance in obtaining child support may also be provided if determined by the department to be appropriate. Child-care assistance may be provided to participants in the community services program as set forth in 53-4-611 and as specified by department rule.

(6) Failure of a caretaker relative to participate in community service work as required must result in the needs of the specified caretaker relative being removed from the cash assistance payment.

(7) A dependent child who meets all eligibility requirements for FAIM financial assistance is not subject to the time limits on assistance in pathways and the community services program that are provided for specified caretaker relatives in this section. However, a dependent child may be ineligible for FAIM financial assistance because of the 60-month limitation on assistance provided in 53-4-231.

History: En. Sec. 3, Ch. 491, L. 1995; amd. Sec. 32, Ch. 486, L. 1997; amd. Sec. 3, Ch. 515, L. 1997; amd. Sec. 3, Ch. 124, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 124 deleted former (8) that read: "(8) The department may enter into an agreement to reimburse a private or local governmental employer for the premium cost of workers' compensation coverage for a participant of the program who is placed at the employer's worksite for developing employment skills." Amendment effective July 1, 1999.

Applicability: Section 7, Ch. 124, L. 1999, provided: "[This act] applies to individuals participating in the FAIM project on and after July 1, 1999."

53-4-604 and 53-4-605 reserved.

53-4-606. Requirements for eligibility. (1) Eligibility for FAIM financial assistance under the FAIM project with regard to income, resources, and all other factors of eligibility must be determined in accordance with the waivers granted by the U.S. secretary of health and human services under section 1115 of the Social Security Act, 42 U.S.C. 1315.

(2) (a) As a condition of eligibility for assistance under pathways and the community services program, all specified caretaker relatives and other family members, as specified by the department by rule, shall enter into a family investment agreement with the department and shall comply with the terms of that agreement. Entering into an agreement is not a condition of eligibility for the job supplement program.

(b) The family investment agreement must set forth the mutual obligations of the participant and the department to help the family achieve the goal of self-sufficiency. The agreement may contain provisions:

(i) regarding actions to be taken by the specified caretaker relative and by the department to secure child support;

(ii) requiring that the immunization and health-screening requirements of the early and periodic screening, diagnosis, and treatment program be met for all children in the family; and

(iii) specifying other services and activities appropriate for the participant or family.

(c) An individual who is required to enter into a family investment agreement and who fails without good cause to do so or fails without good cause to comply with the individual's obligations under the agreement is ineligible, as provided in 53-4-608, for FAIM financial assistance.

(3) As a condition of eligibility for the community service program, a specified caretaker relative shall perform community service work as required by the department.

History: En. Sec. 4, Ch. 491, L. 1995; amd. Sec. 33, Ch. 486, L. 1997.

53-4-607. Exemptions from time limitations in pathways and community services program. (1) Recipients of FAIM financial assistance under the FAIM project may be exempted from the time limitations on assistance under pathways and the community services program contained in 53-4-603 as provided by the department by rule.

(2) In establishing categories of individuals who are exempt from the time limitations on assistance under pathways, the department may take into consideration factors that may delay an individual's attainment of self-sufficiency, including but not limited to the following:

(a) The individual has a verifiable illness, injury, or physical or mental disability.

(b) The individual is of advanced age.

(c) The individual does not have necessary state-paid child care available.

(d) The individual is attending high school or is working toward a graduate equivalency diploma, if the individual is under 18 years of age.

(e) The individual is the parent of a child under 1 year of age.

(f) The individual is providing care to a household member with a disability who requires special care.

(g) The individual is a teenage parent receiving assistance in the individual's own name and participating in activities pursuant to a family investment agreement.

(h) The department failed to substantially comply with its obligations under the family investment agreement.

(i) The individual is a victim of domestic violence as defined by the department by rule.

History: En. Sec. 5, Ch. 491, L. 1995; amd. Sec. 52, Ch. 472, L. 1997; amd. Sec. 34, Ch. 486, L. 1997.

53-4-608. Results of failure to comply with terms of agreement. If an individual is required to enter into a family investment agreement pursuant to 53-4-606 and fails without good cause to enter into an agreement, the individual is ineligible for FAIM financial assistance. If an individual is required to enter into a family investment agreement pursuant to 53-4-606 and fails without good cause to comply with the individual's obligations under the agreement, the individual must be sanctioned for a period of time specified by the department by rule and the needs of the individual may not be taken into consideration in determining the assistance unit's amount of cash assistance. However, the family of a sanctioned individual is entitled to assistance for its own needs if it is otherwise eligible. The income and resources of the individual must be considered in determining the family's eligibility for assistance during the period that the individual is sanctioned.

History: En. Sec. 6, Ch. 491, L. 1995; amd. Sec. 35, Ch. 486, L. 1997.

53-4-609. Categorical eligibility for other assistance. Recipients of FAIM financial assistance under a component of the FAIM project are not categorically eligible for food stamp benefits and the low-income energy assistance program but are eligible only if they satisfy all the eligibility requirements for those programs.

History: En. Sec. 7, Ch. 491, L. 1995; amd. Sec. 36, Ch. 486, L. 1997.

53-4-610 reserved.

53-4-611. Child-care assistance. (1) In the job supplement program component of the FAIM project, the department may provide child-care assistance to all single-parent families if child care is necessary to allow the parent to engage in paid employment and if funding is available. Child-care assistance may, at the department's discretion, be provided to two-parent families if child care is necessary to allow either or both parents to engage in paid employment and if funding is available.

(2) In the pathways component of the FAIM project, the department may provide child-care assistance to all single-parent families if child care is necessary to allow the parent to participate in an activity required by the family investment agreement and if funding is available. Child-care assistance may, at the department's discretion, be provided to two-parent families if child care is necessary to allow either or both of the parents to participate in an activity required by the family investment agreement and if funding is available.

(3) In the community services program component of the FAIM project, the department may provide child-care assistance to all single-parent families if child care is necessary to allow the parent to participate in an activity required by the family investment agreement and if funding is available. Child-care assistance may, at the department's discretion, be provided to two-parent families if child care is necessary to allow either or both of the parents to participate in an activity required by the family investment agreement and if funding is available.

History: En. Sec. 8, Ch. 491, L. 1995; amd. Sec. 37, Ch. 486, L. 1997.

53-4-612. Extended child care and medical assistance benefits. A family receiving FAIM financial assistance under a component of the FAIM project that loses eligibility for assistance because of increased income from any source may receive extended medical assistance benefits if funding is available, provided that the family's income does not exceed a percentage of the federal poverty level specified by the department by rule, and may receive child-care assistance pursuant to 53-4-611 if funding is available.

History: En. Sec. 9, Ch. 491, L. 1995; amd. Sec. 38, Ch. 486, L. 1997.

53-4-613. Employment and training program. In cases in which the department determines that participation in the employment and training program would be appropriate for a participant in pathways, the participant may be required to participate in employment and training as one of the conditions of the participant's family investment agreement.

History: En. Sec. 10, Ch. 491, L. 1995; amd. Sec. 39, Ch. 486, L. 1997.

Part 7

Training for FAIM Recipients

53-4-701. Purpose. It is the purpose of this part to establish a component of the pathways program that:

(1) provides recipients of FAIM financial assistance with the education, training, and employment services needed to avoid long-term welfare dependency; and

(2) complies with the participation requirements established in section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 607.

History: En. Sec. 1, Ch. 550, L. 1989; amd. Sec. 40, Ch. 486, L. 1997.

53-4-702. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "FAIM financial assistance" means the program that provides participants in the job supplement program, pathways program, and community services program of the FAIM project with benefits that may include cash payments, services, and noncash assistance.

(3) "FAIM project" means the families achieving independence in Montana project as established in 53-4-601.

History: En. Sec. 2, Ch. 550, L. 1989; amd. Sec. 21, Ch. 491, L. 1995; amd. Sec. 435, Ch. 546, L. 1995; amd. Sec. 41, Ch. 486, L. 1997.

53-4-703. Employment and training program established. The department shall establish and administer an intensive employment and training program in accordance with the requirements of section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 607.

History: En. Sec. 3, Ch. 550, L. 1989; amd. Sec. 42, Ch. 486, L. 1997.

53-4-704. Placement of FAIM participants for purpose of training. (1) The department or a person designated by the department may place an individual participating in the FAIM project into a position of employment with a public or private entity for the purpose of training the individual in the knowledge and skills necessary for the individual to become successfully employed.

(2) The department may, pursuant to subsection (1), place an individual participating in the FAIM project into a position at a worksite only with the permission and assistance of the public or private entity at the worksite under a written training agreement between the department and the entity.

(3) The placement of an individual into a position at a public or private worksite pursuant to subsection (1) is only for the purpose of training the individual in employment knowledge and skills and is not for the purpose of providing paid employment for the individual. The placement may not supplant an existing employment position or another individual already employed at the worksite. Placement of the individual at the public or private worksite pursuant to subsection (1) should last no longer than is necessary to achieve the employment training purposes of the FAIM project.

(4) The private or public entity where an individual is placed pursuant to subsection (1) may choose whether or not to later employ the individual after the conclusion of the individual's training.

History: En. Sec. 4, Ch. 124, L. 1999.

Compiler's Comments

Effective Date: Section 6, Ch. 124, L. 1999, provided: "[This act] is effective July 1, 1999."

Applicability: Section 7, Ch. 124, L. 1999, provided: "[This act] applies to individuals participating in the FAIM project on and after July 1, 1999."

53-4-705. Services and activities. Under the program provided for in 53-4-703, the department shall make available a broad range of services and activities to assist recipients of FAIM financial assistance as specified by the department by rule.

History: En. Sec. 4, Ch. 550, L. 1989; amd. Sec. 43, Ch. 486, L. 1997.

53-4-706. Participation requirements. (1) Except as otherwise provided in this section, the department may require individuals to participate in the employment and training program as a condition of their eligibility for FAIM financial assistance.

(2) To the extent that the program is available and that state resources permit, the department shall require recipients of FAIM financial assistance who are participating in the pathways component of the FAIM project to participate in the program if the department determines that it is an appropriate activity for the recipient and includes participation as a condition of the recipient's family investment agreement.

History: En. Sec. 5, Ch. 550, L. 1989; amd. Sec. 22, Ch. 491, L. 1995; amd. Sec. 44, Ch. 486, L. 1997.

53-4-707. Repealed. Sec. 51, Ch. 486, L. 1997.

History: En. Sec. 6, Ch. 550, L. 1989; amd. Sec. 2, Ch. 200, L. 1995; amd. Sec. 23, Ch. 491, L. 1995.

53-4-708. Repealed. Sec. 51, Ch. 486, L. 1997.

History: En. Sec. 7, Ch. 550, L. 1989.

53-4-709 through 53-4-714 reserved.

53-4-715. Repealed. Sec. 51, Ch. 486, L. 1997.

History: En. Sec. 8, Ch. 550, L. 1989.

53-4-716. Repealed. Sec. 51, Ch. 486, L. 1997.

History: En. Sec. 9, Ch. 550, L. 1989.

53-4-717. Sanctions. If an individual receiving FAIM financial assistance under the FAIM project is required to participate in the employment and training program as a condition of the individual's family investment agreement and fails without good cause to participate, the individual must be sanctioned in accordance with rules established by the department. Except as required by federal law, a sanction may not include any restriction or termination of food stamps or medicaid coverage, and child care benefits may only be continued for employment-related activities required by the family investment agreement that the FAIM participant has signed that are to be performed during the sanction period. The department may establish rules to ensure that individuals who participate in good faith are sanctioned properly and avail themselves of additional case management services to ensure compliance with the family investment agreement.

History: En. Sec. 10, Ch. 550, L. 1989; amd. Sec. 24, Ch. 491, L. 1995; amd. Sec. 45, Ch. 486, L. 1997; amd. Sec. 1, Ch. 458, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 458 inserted second and third sentences prohibiting sanction from including restriction or termination of food stamps or medicaid coverage, authorizing continuation of child care benefits for certain required employment-related activities, and authorizing department rulemaking related to proper sanctioning and agreement compliance. Amendment effective July 1, 1999.

53-4-718. Repealed. Sec. 51, Ch. 486, L. 1997.

History: En. Sec. 11, Ch. 550, L. 1989.

53-4-719. Rulemaking authority. The department of public health and human services may adopt rules necessary to implement the provisions of this part.

History: En. Sec. 15, Ch. 550, L. 1989; amd. Sec. 436, Ch. 546, L. 1995.

53-4-720. Repealed. Sec. 51, Ch. 486, L. 1997.

History: En. Sec. 16, Ch. 550, L. 1989.

53-4-721. Sanctions policy — study. (1) The department shall conduct and, when appropriate, incorporate into the FAIM project evaluation a study to investigate the impact of its sanctions policy on families participating in the FAIM project. The study must include but not be limited to:

(a) information on the rate of successful appeals of sanctions imposed on individuals;

(b) what circumstances led to any improper sanctioning;

(c) what services or assistance could have prevented the improper sanctioning of the individual; and

(d) what services or assistance could be provided to individuals to lower the sanction rate in the FAIM project.

(2) The study must also include model policies outlining progressive disciplinary practices used in the private sector and the applicability of those practices to the FAIM program.

(3) The study must be conducted as part of the department's current efforts to evaluate the FAIM project.

(4) The department shall report the progress of the study to the 57th legislature.

History: En. Sec. 2, Ch. 458, L. 1999.

Compiler's Comments

Effective Date: Section 4, Ch. 458, L. 1999, provided that this section is effective July 1, 1999.

Parts 8 and 9 reserved

Part 10

Children's Health Insurance

53-4-1001. *(Temporary)* **Short title.** This part may be cited as the "Children's Health Insurance Program Act". *(Terminates on occurrence of contingency—sec. 15, Ch. 571, L. 1999.)*

History: En. Sec. 1, Ch. 571, L. 1999.

Compiler's Comments

Effective Date: Section 14, Ch. 571, L. 1999, provided: "[This act] is effective on passage and approval." Approved May 6, 1999.

Contingent Termination: Section 15, Ch. 571, L. 1999, provided: "(1) [This act] terminates on the date that the director of the department of public health and human services certifies to the governor that the federal government has terminated the program or that federal funding for the program has been discontinued.

(2) The governor shall transmit a copy of the certification to the code commissioner.

(3) Any excess funds remaining upon the termination of the program must be transferred to the general fund."

53-4-1002. *(Temporary)* **Purpose — definition.** (1) The purpose of this part is to create a program to provide health care to children who are not eligible for health care services under the Montana medicaid program. These health care services may be provided by the payment for health care through an insurance plan, a health maintenance organization, or a managed care plan.

(2) As used in 53-4-1003 through 53-4-1005 and 53-4-1007 through 53-4-1010, "program" means the state children's health insurance program. *(Terminates on occurrence of contingency—sec. 15, Ch. 571, L. 1999.)*

History: En. Sec. 2, Ch. 571, L. 1999.

Compiler's Comments

Effective Date: Section 14, Ch. 571, L. 1999, provided: "[This act] is effective on passage and approval." Approved May 6, 1999.

Contingent Termination: Section 15, Ch. 571, L. 1999, provided: "(1) [This act] terminates on the date that the director of the department of public health and human services certifies to the governor that the federal government has terminated the program or that federal funding for the program has been discontinued.

(2) The governor shall transmit a copy of the certification to the code commissioner.

(3) Any excess funds remaining upon the termination of the program must be transferred to the general fund."

53-4-1003. *(Temporary)* **Establishment and administration of program.** The department of public health and human services may establish, administer, and monitor a program to provide health care to uninsured children. The department may not use money appropriated for this program to expand eligibility criteria for the Montana medicaid program. *(Terminates on occurrence of contingency—sec. 15, Ch. 571, L. 1999.)*

History: En. Sec. 3, Ch. 571, L. 1999.

Compiler's Comments

Effective Date: Section 14, Ch. 571, L. 1999, provided: "[This act] is effective on passage and approval." Approved May 6, 1999.

Contingent Termination: Section 15, Ch. 571, L. 1999, provided: "(1) [This act] terminates on the date that the director of the department of public health and human services certifies to the governor that the federal government has terminated the program or that federal funding for the program has been discontinued.

(2) The governor shall transmit a copy of the certification to the code commissioner.

(3) Any excess funds remaining upon the termination of the program must be transferred to the general fund."

53-4-1004. *(Temporary)* **Eligibility for program — rulemaking.** (1) To be considered eligible for the program, a child:

(a) must be 18 years of age or younger;

(b) except as provided in subsection (4), must have a combined family income at or below 150% of the federal poverty level;

(c) may not already be covered by private insurance that offers creditable coverage, as defined in 42 U.S.C. 300gg(c);

(d) may not be eligible for medicaid benefits; and

(e) must be a United States citizen or qualified alien and a Montana resident.

(2) The department of public health and human services shall adopt rules that establish the program's criteria for residency. The criteria must conform as nearly as practicable with the residency requirements for medicaid eligibility.

(3) Subject to 53-4-1009(3), rules governing eligibility may also include financial standards and criteria for income and resources, treatment of resources, and nonfinancial criteria.

(4) If the department determines that there is insufficient funding for the program, it may lower the percentage of the federal poverty level established in subsection (1)(b) in order to reduce the number of persons who may be eligible to participate. *(Terminates on occurrence of contingency—sec. 15, Ch. 571, L. 1999.)*

History: En. Sec. 4, Ch. 571, L. 1999.

Compiler's Comments

Effective Date: Section 14, Ch. 571, L. 1999, provided: "[This act] is effective on passage and approval." Approved May 6, 1999.

Contingent Termination: Section 15, Ch. 571, L. 1999, provided: "(1) [This act] terminates on the date that the director of the department of public health and human services certifies to the governor that the federal government has terminated the program or that federal funding for the program has been discontinued.

(2) The governor shall transmit a copy of the certification to the code commissioner.

(3) Any excess funds remaining upon the termination of the program must be transferred to the general fund."

53-4-1005. *(Temporary)* **Benefits provided.** (1) Benefits provided to participants in the program include but are not limited to:

(a) inpatient and outpatient hospital services;

(b) physician and advanced practice registered nurse services;

(c) laboratory and x-ray services;

(d) well-child and well-baby services;

(e) immunizations;

(f) clinic services;

(g) dental services;

(h) prescription drugs;

(i) mental health and substance abuse treatment services;

(j) hearing and vision exams; and

(k) eyeglasses.

(2) The department is specifically prohibited from providing payment for birth control contraceptives under this program. *(Terminates on occurrence of contingency—sec. 15, Ch. 571, L. 1999.)*

History: En. Sec. 5, Ch. 571, L. 1999.

Compiler's Comments

Effective Date: Section 14, Ch. 571, L. 1999, provided: "[This act] is effective on passage and approval." Approved May 6, 1999.

Contingent Termination: Section 15, Ch. 571, L. 1999, provided: "(1) [This act] terminates on the date that the director of the department of public health and human services certifies to the governor that the federal government has terminated the program or that federal funding for the program has been discontinued.

(2) The governor shall transmit a copy of the certification to the code commissioner.

(3) Any excess funds remaining upon the termination of the program must be transferred to the general fund."

53-4-1006. Simplified application form for programs that provide medical assistance or benefits or health insurance to children. (1) The department of public health and human services shall develop and implement the use of a simplified application form and process to determine eligibility for children to receive:

(a) medical assistance or medical benefits as provided in 53-6-131;

(b) the child-only group health insurance plan provided through the federal Title IV-D program of the department; or

(c) health care under the state children's health insurance program as provided in this part.

(2) The application for eligibility for medical assistance may not presume that application is being made for other forms of public assistance. An appropriate resource test may be incorporated into the application. The department of public health and human services shall coordinate education and outreach efforts with any organization performing education and outreach for any of the programs that are included in the form.

History: En. Sec. 1, Ch. 215, L. 1999.

Compiler's Comments

Effective Date: Section 4, Ch. 215, L. 1999, provided: "[This act] is effective on passage and approval." Approved March 30, 1999.

53-4-1007. *(Temporary)* **Department may contract for services.** The department of public health and human services may contract with insurance companies or other entities to provide services for a set monthly or yearly fee based on the number of participants in the program and the types of services provided. *(Terminates on occurrence of contingency—sec. 15, Ch. 571, L. 1999.)*

History: En. Sec. 6, Ch. 571, L. 1999.

Compiler's Comments

Effective Date: Section 14, Ch. 571, L. 1999, provided: "[This act] is effective on passage and approval." Approved May 6, 1999.

Contingent Termination: Section 15, Ch. 571, L. 1999, provided: "(1) [This act] terminates on the date that the director of the department of public health and human services certifies to the governor that the federal government has terminated the program or that federal funding for the program has been discontinued.

(2) The governor shall transmit a copy of the certification to the code commissioner.

(3) Any excess funds remaining upon the termination of the program must be transferred to the general fund."

53-4-1008. *(Temporary)* **Participant cost-sharing.** The department of public health and human services may charge fees to participants in the program. The fees may include:

(1) monthly or yearly enrollment fees;

(2) minimum charges to be incurred or spent before benefits are paid;

(3) cost-sharing for individual benefits; and

(4) other types of charges assessed as part of the program. *(Terminates on occurrence of contingency—sec. 15, Ch. 571, L. 1999.)*

History: En. Sec. 7, Ch. 571, L. 1999.

Compiler's Comments

Effective Date: Section 14, Ch. 571, L. 1999, provided: "[This act] is effective on passage and approval." Approved May 6, 1999.

Contingent Termination: Section 15, Ch. 571, L. 1999, provided: "(1) [This act] terminates on the date that the director of the department of public health and human services certifies to the governor that the federal government has terminated the program or that federal funding for the program has been discontinued.

(2) The governor shall transmit a copy of the certification to the code commissioner.

(3) Any excess funds remaining upon the termination of the program must be transferred to the general fund."

53-4-1009. *(Temporary)* **Department to adopt rules — review by interim committee.** (1) The department of public health and human services shall adopt rules necessary for the administration of the program, including rules governing the application process, termination, and confidentiality.

(2) The rules may include, as necessary:

(a) the amount, scope, and duration of specific services provided;

(b) criteria to ensure that the services provided are medically necessary and cost-effective;

(c) provisions for participant cost-sharing, including, at the department's discretion:

(i) the establishment of enrollment fees, premiums, deductibles, and copayments; and

(ii) the process for setting the amounts of enrollment fees, premiums, deductibles, and copayments, taking into account a participant's family income and resources; and

(d) the type of professionals who may deliver services or direct the delivery of services and the qualifications required of those professionals.

(3) In adopting rules, the department shall consider the federal requirements on which the receipt of the federal share of program funds are contingent and may not include any provision that places that funding at risk.

(4) Rules adopted by the department pursuant to 53-4-1004 and 53-4-1009 must be presented to and reviewed by an appropriate interim committee that examines issues related to children and families. *(Terminates on occurrence of contingency—sec. 15, Ch. 571, L. 1999.)*

History: En. Sec. 8, Ch. 571, L. 1999.

Compiler's Comments

Effective Date: Section 14, Ch. 571, L. 1999, provided: "[This act] is effective on passage and approval." Approved May 6, 1999.

Contingent Termination: Section 15, Ch. 571, L. 1999, provided: "(1) [This act] terminates on the date that the director of the department of public health and human services certifies to the governor that the federal government has terminated the program or that federal funding for the program has been discontinued.

(2) The governor shall transmit a copy of the certification to the code commissioner.

(3) Any excess funds remaining upon the termination of the program must be transferred to the general fund."

53-4-1010. *(Temporary)* **Sharing of information.** The department of public health and human services, health care providers, insurance companies, and other entities may share only health care information, medical records, income, and other participant eligibility information for the purposes of administering the program. The limitations on disclosure of information provided in 33-19-306 do not apply if they conflict with this part. To the extent possible, the information may not be disclosed in a manner that would violate the privacy of an individual or be released to any entity that is not necessary for the administration of the program. *(Terminates on occurrence of contingency—sec. 15, Ch. 571, L. 1999.)*

History: En. Sec. 9, Ch. 571, L. 1999.

Compiler's Comments

Effective Date: Section 14, Ch. 571, L. 1999, provided: "[This act] is effective on passage and approval." Approved May 6, 1999.

Contingent Termination: Section 15, Ch. 571, L. 1999, provided: "(1) [This act] terminates on the date that the director of the department of public health and human services certifies to the governor that the federal government has terminated the program or that federal funding for the program has been discontinued.

(2) The governor shall transmit a copy of the certification to the code commissioner.

(3) Any excess funds remaining upon the termination of the program must be transferred to the general fund."

53-4-1011. *(Temporary)* **Tobacco settlement funds to general fund.** Funds received from the tobacco settlement must be deposited in the general fund. Any funds appropriated for the children's health insurance program that remain unexpended at the end of the biennium must be transferred to the general fund. *(Terminates on occurrence of contingency—sec. 15, Ch. 571, L. 1999.)*

History: En. Sec. 10, Ch. 571, L. 1999.

Compiler's Comments

Effective Date: Section 14, Ch. 571, L. 1999, provided: "[This act] is effective on passage and approval." Approved May 6, 1999.

Contingent Termination: Section 15, Ch. 571, L. 1999, provided: "(1) [This act] terminates on the date that the director of the department of public health and human services certifies to the governor that the federal government has terminated the program or that federal funding for the program has been discontinued.

(2) The governor shall transmit a copy of the certification to the code commissioner.

(3) Any excess funds remaining upon the termination of the program must be transferred to the general fund."

CHAPTER 5

ADULT SERVICES

Part 1 — Problems of Aging
(Renumbered by Code Commissioner, 1991)

Part 2 — Protective Services
(Renumbered by Code Commissioner, 1991)

Part 3 — Adult Foster Family Care
(Renumbered by Code Commissioner, 1991)

Part 4 — Old-Age Assistance Recovery
(Repealed. Sec. 27, Ch. 492, L. 1995)

Part 5 — Montana Elder and Developmentally Disabled Abuse Prevention Act
(Renumbered by Code Commissioner, 1991)

Part 6 — State Plan on Aging
(Renumbered by Code Commissioner, 1991)

Part 7 — Montana Older Americans Act
(Renumbered by Code Commissioner, 1991)

Part 8 — Ombudsman Services
(Renumbered by Code Commissioner, 1991)

Part 9 — Notice of Medicare Assignments

53-5-901. Medicare assignments — notice required.

Part 1

Problems of Aging (Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered:

53-5-101. Renumbered 52-3-101.
53-5-102. Renumbered 52-3-102.
53-5-103. Renumbered 52-3-103.
53-5-104 through 53-5-110 reserved.
53-5-111. Renumbered 52-3-111.

Part 2

Protective Services (Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered:

53-5-201. Renumbered 52-3-201.
53-5-202. Renumbered 52-3-202.
53-5-203. Renumbered 52-3-203.
53-5-204. Renumbered 52-3-204.
53-5-205. Renumbered 52-3-205.
53-5-206. Renumbered 52-3-206.
53-5-207. Renumbered 52-3-207.

Part 3

Adult Foster Family Care (Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered:

53-5-301. Renumbered 52-3-301.
53-5-302. Renumbered 52-3-302.
53-5-303. Renumbered 52-3-303.
53-5-304. Renumbered 52-3-304.
53-5-305. Renumbered 52-3-305.
53-5-306 through 53-5-310 reserved.
53-5-311. Renumbered 52-3-311.
53-5-312. Renumbered 52-3-312.
53-5-313. Renumbered 52-3-313.
53-5-314. Renumbered 52-3-314.

Part 4

Old-Age Assistance Recovery (Repealed. Sec. 27, Ch. 492, L. 1995)

Part Compiler's Comments

Histories of Repealed Sections:

53-5-401. En. Sec. 11, Part 3, Ch. 82, L. 1937; amd. Sec. 1, Ch. 178, L. 1943; amd. Sec. 1, Ch. 63, L. 1947; amd. Sec. 1, Ch. 234, L. 1953; R.C.M. 1947, 71-412; amd. Sec. 13, Ch. 324, L. 1991.

Part 5

Montana Elder and Developmentally Disabled Abuse Prevention Act (Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered:

53-5-501. Renumbered 52-3-801.
53-5-502. Renumbered 52-3-802.
53-5-503. Renumbered 52-3-803.
53-5-504. Renumbered 52-3-804.
53-5-505. Renumbered 52-3-805.
53-5-506 through 53-5-510 reserved.
53-5-511. Renumbered 52-3-811.
53-5-512. Renumbered 52-3-812.
53-5-513. Renumbered 52-3-813.
53-5-514. Renumbered 52-3-814.
53-5-515 through 53-5-520 reserved.
53-5-521. Renumbered 52-3-821.
53-5-522 through 53-5-524 reserved.
53-5-525. Renumbered 52-3-825.

Part 6

State Plan on Aging (Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered:

53-5-601. Renumbered 52-3-401.
53-5-602. Renumbered 52-3-402.
53-5-603. Renumbered 52-3-403.
53-5-604. Renumbered 52-3-404.
53-5-605. Renumbered 52-3-405.
53-5-606. Renumbered 52-3-406.

Part 7

Montana Older Americans Act (Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered:

53-5-701. Renumbered 52-3-501.
53-5-702. Renumbered 52-3-502.
53-5-703. Renumbered 52-3-503.
53-5-704. Renumbered 52-3-504.
53-5-705. Renumbered 52-3-505.
53-5-706. Renumbered 52-3-506.

Part 8

Ombudsman Services (Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered:

53-5-801.	Renumbered 52-3-601.
53-5-802.	Renumbered 52-3-602.
53-5-803.	Renumbered 52-3-603.
53-5-804.	Renumbered 52-3-604.
53-5-805.	Renumbered 52-3-605.

Part 9

Notice of Medicare Assignments

53-5-901. Medicare assignments — notice required. (1) A health care provider shall give notice to a medicare patient as to whether or not the provider accepts payment for services on the basis of an assignment, pursuant to section 1842(b)(3)(B)(ii) of the federal Social Security Act (42 U.S.C. 1395u(b)(3)(B)(ii)), the terms of which provide that the full charge for services is the amount of the medicare approved rate for payment of the applicable service plus any deductible, coinsurance, or copayment required to be paid by the patient.

(2) The notice required under subsection (1) must be posted by each health care provider in a conspicuous area in his place of business.

(3) For purposes of this section, "health care provider" means a person, firm, corporation, association, or institution that provides goods or services subject to reimbursement under the federal medicare program in accordance with Title XVIII of the federal Social Security Act (42 U.S.C. 1395, et seq.).

History: En. Sec. 1, Ch. 306, L. 1989.

CHAPTER 6

HEALTH CARE SERVICES

Part 1 — Medical Assistance—Medicaid

53-6-101. Montana medicaid program — authorization of services.
53-6-102. Repealed.
53-6-103. Repealed.
53-6-104. Freedom of doctors to treat recipients of medical assistance — freedom to select doctor.
53-6-105. Discrimination prohibited.
53-6-106. Health care facility standards — definitions.
53-6-107. Sanctions — penalties.
53-6-108. Rules governing sanctions or remedies.
53-6-109 reserved.
53-6-110. Report and recommendations on medicaid funding.
53-6-111. Department charged with administration and supervision of medical assistance program — overpayment recovery — sanctions for fraudulent and abusive activities — adoption of rules.
53-6-112. Department to print and distribute copies of part and certain forms.
53-6-113. Department to adopt rules.
53-6-114. Rules of department binding on county welfare departments.
53-6-115. Contracts with other agencies.
53-6-116. Medicaid managed care — capitated health care.
53-6-117. Participation requirements.
53-6-118 through 53-6-120 reserved.

53-6-121. County department charged with local administration of medical assistance.
53-6-122 through 53-6-130 reserved.
53-6-131. Eligibility requirements.
53-6-132. Application for assistance — exception.
53-6-133. Investigation and determination of eligibility.
53-6-134. Extension of eligibility for medical assistance to persons terminated from FAIM financial assistance.
53-6-135 through 53-6-138 reserved.
53-6-139. Terminated.
53-6-140. Account not to be treated as asset for purposes of eligibility.
53-6-141. Repealed.
53-6-142. Periodic review of assistance.
53-6-143. Medical assistance liens and recoveries.
53-6-144. Relative's responsibility.
53-6-145. Agencies to adopt rules governing personal assistant services.
53-6-146 through 53-6-149 reserved.
53-6-150. Donated funds.
53-6-151 through 53-6-154 reserved.
53-6-155. Definitions.
53-6-156. Medicaid fraud control unit.
53-6-157. Powers and duties of medicaid fraud control unit.
53-6-158. Cooperation of governmental agencies with medicaid fraud control unit.
53-6-159. Permitted disclosure of information obtained in medicaid fraud control unit investigations.
53-6-160. Truthfulness, completeness, and accuracy of submissions to medicaid agencies.
53-6-161 through 53-6-164. Terminated.
53-6-165. Definitions.
53-6-166. Period of ineligibility for medical assistance when assets disposed of for less than fair market value — undue hardship exception — department to adopt rules.
53-6-167. Recovery of medicaid benefits after recipient's death.
53-6-168. Payment of certain funds of deceased recipient to department.
53-6-169. Payment of excess burial funds or assets to department.
53-6-170. Inpatient hospital youth psychiatric benefits.
53-6-171. Department lien upon real property of certain medicaid recipients — conditions.
53-6-172. Notice of intent to impose lien — opportunity for hearing.
53-6-173. Contents of lien document — scope of obligation secured.
53-6-174. Filing of lien — effect of filing — priority — renewal — dissolution of lien.
53-6-175. Recovery of medical assistance secured by lien — application for issuance of writ of execution.
53-6-176. Notice of application — proof of notice — request for issuance of writ of execution.
53-6-177. Action to challenge issuance of writ of execution.
53-6-178. Department right of recovery — limitations.
53-6-179. Payment of amount due — periodic payments — substitute security.
53-6-180. Waiver of recovery in cases of undue hardship — rulemaking.
53-6-181. Delay in recovery — sale subject to lien.
53-6-182. Spouse's limited exemption from lien.
53-6-183. Issuance of writ of execution by clerk of court.
53-6-184. Effect of sale — title acquired.
53-6-185. Disposition of sale proceeds — application of recovered medical assistance.
53-6-186. Action by department or other person to preserve property subject to lien — recovery of costs.
53-6-187. Time for filing of application.
53-6-188. Coordination of lien with other medical assistance recoveries.
53-6-189. Rulemaking authority.

Part 2 — Renal Disease Treatment Program
(Renumbered by Code Commissioner, 1991)

Part 3 — Montana State Hospital
(Renumbered by Code Commissioner, 1991)

Part 4 — Community-Based Long-Term Care Medicaid Services

53-6-401. Definitions.
53-6-402. Community-based long-term care facilities — powers and duties of department.

Part 5 — Traumatic Brain Injury—Services

53-6-501. Traumatic brain injury defined.
53-6-502. Traumatic brain injury trust fund established — source of funds — uses.

Part 6 — Long-Term Care Reform

53-6-601. Short title.
53-6-602. Purpose — policy.
53-6-603. Long-term care service development — coordination — delivery.

Part 7 — Medicaid Managed Care

53-6-701. Policy of medicaid managed care — system for integrated health care services.
53-6-702. Definitions.
53-6-703. Managed care community network.
53-6-704. Different benefit packages.
53-6-705. Requirements for managed health care entities.
53-6-706. Requirements relating to enrollees.
53-6-707. Payment reductions and adjustments — freedom to contract.
53-6-708. Waiver.
53-6-709. Legislative auditor — oversight.

Part 8 — Long-Term Care Insurance Partnerships

53-6-801. Purpose.
53-6-802. Definitions.
53-6-803. Long-term care insurance partnerships authorized.
53-6-804. Rulemaking and certification of policies by commissioner and department.
53-6-805. Department to make rules.

Part 9 — Medicaid Medical Savings Account Pilot Project

53-6-901. Legislative findings and purpose.
53-6-902. Definitions.
53-6-903. Medicaid medical savings accounts — pilot project elements — project timelines — contracts.
53-6-904. Pilot project design plan required.
53-6-905. Choice of pilot project participants.
53-6-906. Request by department for waivers.
53-6-907. Medical savings accounts — administration — payments — terms and conditions.
53-6-908. High-deductible health care coverage required.
53-6-909. Project evaluation — outcomes measurement — independent assessment.
53-6-910. Reports required.

Part 1
Medical Assistance — Medicaid

Part Cross-References

Institutions and assistance, Art. XII, sec. 3, Mont. Const.

Families Achieving Independence in Montana (FAIM) financial assistance program, Title 53, ch. 4, part 2.

53-6-101. Montana medicaid program — authorization of services. (1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended. The department of public health and human services shall administer the Montana medicaid program.

(2) Medical assistance provided by the Montana medicaid program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;

(d) skilled nursing services in long-term care facilities;

(e) physicians' services;

(f) nurse specialist services;

(g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;

(h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

(i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;

(j) services that are provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;

(k) health services provided under a physician's orders by a public health department; and

(l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2).

(3) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy services;

(f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 2;

(g) clinical social worker services;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) prescribed eyeglasses;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) inpatient psychiatric hospital services for persons under 21 years of age;

(l) services of professional counselors licensed under Title 37, chapter 23;

(m) hospice care, as defined in 42 U.S.C. 1396d(o);

(n) case management services as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill;

(o) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and

(p) any additional medical service or aid allowable under or provided by the federal Social Security Act.

(4) Services for persons qualifying for medicaid under the medically needy category of assistance as described in 53-6-131 may be more limited in amount, scope, and duration than services provided to others qualifying for assistance under the Montana medicaid program. The department is not required to provide all of the services listed in subsections (2) and (3) to persons qualifying for medicaid under the medically needy category of assistance.

(5) In accordance with waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may implement limited medicaid benefits, to be known as basic medicaid, for adult recipients who are eligible because they are receiving FAIM financial assistance, as defined in 53-4-702, as the specified caretaker relative of a dependent child under the FAIM project and for all adult recipients of medical assistance only who are covered under a group related to the program of FAIM financial assistance, as defined in 53-4-702. Basic medicaid benefits consist of all mandatory services listed in subsections (2)(a) through (2)(l) but may include those optional services listed in subsections (3)(a) through (3)(p) that the department in its discretion specifies by rule. The department, in exercising its discretion, may consider the amount of funds appropriated by the legislature for the FAIM project and whether the provision of a particular service is commonly covered by private health insurance plans. However, a recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage.

(6) The department may implement, as provided for in Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(7) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(8) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

(9) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended.

(10) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(11) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

(12) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted under this chapter.

(13) Medicaid payment for personal-care facilities may not be made unless the department certifies to the director of the governor's office of budget and program planning that payment to this type of provider would, in the aggregate, be a cost-effective alternative to services otherwise provided.

History: En. Sec. 2, Ch. 325, L. 1967; amd. Sec. 1, Ch. 261, L. 1971; R.C.M. 1947, 71-1512(part); amd. Sec. 1, Ch. 77, L. 1985; amd. Sec. 1, Ch. 329, L. 1987; amd. Sec. 19, Ch. 97, L. 1989; amd. Sec. 1, Ch. 417, L. 1989; amd. Sec. 1, Ch. 633, L. 1989; amd. Sec. 10, Ch. 649, L. 1989; amd. Sec. 1, Ch. 711, L. 1989; amd. Sec. 1, Ch. 310, L. 1991; amd. Sec. 1, Ch. 388, L. 1991; amd. Secs. 3, 7, Ch. 460, L. 1991; amd. Sec. 4, Ch. 634, L. 1991; amd. Sec. 3, Ch. 663, L. 1991; amd. Sec. 3, Ch. 764, L. 1991; amd. Sec. 6, Ch. 590, L. 1993; amd. Sec. 2, Ch. 14, Sp. L. November 1993; amd. Sec. 25, Ch. 491, L. 1995; amd. Sec. 438, Ch. 546, L. 1995; amd. Sec. 46, Ch. 486, L. 1997.

Cross-References

Physician assistant-certified defined, 37-20-401.

Montana Initiative for the Abatement of Mortality in Infants (MIAMI) Act, Title 50, ch. 19, part 3.

Community-based long-term care — Medicaid, Title 53, ch. 6, part 4.

53-6-102. Repealed. Sec. 8, Ch. 711, L. 1989.

History: En. Sec. 2, Ch. 325, L. 1967; amd. Sec. 1, Ch. 261, L. 1971; R.C.M. 1947, 71-1512(part).

53-6-103. Repealed. Sec. 5, Ch. 31, Sp. L. November 1993.

History: En. Sec. 1, Ch. 325, L. 1967; amd. Secs. 47 and 48, Ch. 121, L. 1974; R.C.M. 1947, 71-1511(3); amd. Sec. 2, Ch. 711, L. 1989.

53-6-104. Freedom of doctors to treat recipients of medical assistance — freedom to select doctor. (1) The department of public health and human services shall provide for professional freedom of those licensed practitioners who provide medical assistance under this part and provide reasonable freedom of choice to recipients of medical aid to select the vendor or provider of medical care, services, or prescribed drugs.

(2) This section may not be construed to prohibit the department from imposing conditions on the payment of provider services and the receipt of medical assistance, as provided for under 53-6-111 and 53-6-113 through 53-6-116.

History: En. Sec. 4, Ch. 325, L. 1967; R.C.M. 1947, 71-1514; amd. Sec. 1, Ch. 475, L. 1985; amd. Sec. 3, Ch. 711, L. 1989; amd. Sec. 1, Ch. 31, Sp. L. November 1993; amd. Sec. 439, Ch. 546, L. 1995.

53-6-105. Discrimination prohibited. No discrimination shall be practiced or asserted against any applicant for or recipient of care and services under this part on the basis of race, color, or national origin, and the furnishing of care and services under this part to any applicant or recipient thereof shall not be delayed or denied on the basis of race, color, or national origin.

History: En. Sec. 16, Ch. 325, L. 1967; R.C.M. 1947, 71-1526.

Cross-References

Individual dignity, Art. II, sec. 4, Mont. Const.

Illegal discrimination, Title 49, ch. 2.

53-6-106. Health care facility standards — definitions. (1) For purposes of 53-6-106 through 53-6-108, the following definitions apply:

(a) "Department" means the department of public health and human services.

(b) "Health care facility" means a health care facility as defined in 50-5-101 and includes a public health center as defined in 7-34-2102.

(2) The department may enter into agreements with appropriate federal agencies for the purpose of certifying health care facilities for the Montana medicaid program.

(3) The department may adopt rules as necessary to prescribe minimum standards for the maintenance and operation of health care facilities. Standards for the quality of care provided by those facilities receiving reimbursement under the Montana medicaid program must be consistent with those requirements imposed upon health care facilities by Title XIX of the federal Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, and by the implementing regulations contained in Title 42 of the Code of Federal Regulations, as may be amended. The authority to prescribe standards and adopt rules under 53-6-106 through 53-6-108 is in addition to the authority granted to the department pursuant to Title 50, chapter 5.

(4) Standards adopted by the department may include but are not limited to requirements in the following areas: staffing, fire protection, health and safety, food and nutrition, environmental and sanitation, administration, admission policies, patient care planning, training, medication, health services, rehabilitation services, and social services and activities.

History: En. Sec. 4(1) thru (4), Ch. 711, L. 1989; amd. Sec. 12, Ch. 354, L. 1995; amd. Sec. 158, Ch. 418, L. 1995; amd. Sec. 440, Ch. 546, L. 1995; amd. Sec. 17, Ch. 93, L. 1997.

53-6-107. Sanctions — penalties. (1) The department of public health and human services may suspend, terminate, or refuse to renew an agreement with a health care facility that has failed to meet the requirements for certification for or participation in the Montana medicaid program under 53-6-106 through 53-6-108 or other applicable law. The department may also impose sanctions in the form of denial of medicaid payments for new admissions or other penalties or sanctions as described in 53-6-111 or Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, and any implementing federal regulations and policies.

(2) The department may impose a civil monetary penalty, with interest not to exceed 12% a year, for each day that a facility is substantially out of compliance with standards or participation requirements provided by applicable state or federal laws, regulations, rules, or policies, including but not limited to standards adopted by the department under the authority of Title 50, chapter 5, or 53-6-106 through 53-6-108. Penalties must be collected by the department and may be applied to the protection of the health and property of residents of health care facilities that the department finds deficient, including but not limited to payment for the costs of relocation of residents to other facilities, operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

(3) The department may appoint temporary management personnel to oversee the operation of the facility and to ensure the health and safety of the facility's residents if there is a need for temporary management because:

(a) an orderly closure of the facility is necessary; or

(b) improvements are being made to bring the facility into compliance with applicable standards.

(4) The department shall, in the case of an emergency, close the facility or transfer residents in the facility to other facilities, or both.

History: **En. Sec. 4(5) thru (8), Ch. 711, L. 1989; amd. Sec. 13, Ch. 354, L. 1995; amd. Sec. 159, Ch. 418, L. 1995; amd. Sec. 441, Ch. 546, L. 1995.**

53-6-108. Rules governing sanctions or remedies. The department of public health and human services shall adopt rules governing the application of sanctions or remedies imposed under 53-6-107, the amounts of any fines, and the severity of each of these sanctions or remedies. The rules must be designed for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. The civil penalty for violation of the applicable standards imposed by state or federal laws, regulations, rules, or policies may not exceed $10,000 for each day that the deficiency remains uncorrected. A health care facility aggrieved by an action of the department may request a hearing pursuant to Title 2, chapter 4, part 6.

History: **En. Sec. 4(9), Ch. 711, L. 1989; amd. Sec. 14, Ch. 354, L. 1995; amd. Sec. 160, Ch. 418, L. 1995; amd. Sec. 442, Ch. 546, L. 1995.**

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Medicaid rules, 53-6-113.

53-6-109 reserved.

53-6-110. Report and recommendations on medicaid funding. (1) As a part of the information required in 17-7-111, the department of public health and human services shall submit a report concerning medicaid funding for the next biennium. This report must include at least the following elements:

(a) analysis of past and present funding levels for the various categories and types of health services eligible for medicaid reimbursement;

(b) projected increased medicaid funding needs for the next biennium. These projections must identify the effects of projected population growth and demographic patterns on at least the following elements:

(i) trends in unit costs for services, including inflation;

(ii) trends in use of services;

(iii) trends in medicaid recipient levels; and

(iv) the effects of new and projected facilities and services for which a need has been identified in the state health care facilities plan.

(2) As an integral part of the report, the department of public health and human services shall present a recommendation of funding levels for the medicaid program. The recommendation need not be consistent with the state health care facilities plan.

(3) In making its appropriations for medicaid funding, the legislature shall specify the portions of medicaid funding anticipated to be allocated to specific categories and types of health care services.

(4) Whenever the department of public health and human services establishes an estimate of medicaid expenditures for medicaid services, the department shall submit the estimate to the legislative finance committee. The legislative finance committee shall consider the estimate at its next regularly scheduled meeting.

History: **En. Sec. 8, Ch. 329, L. 1983; amd. Sec. 39, Ch. 112, L. 1991; amd. Sec. 35, Ch. 349, L. 1993; (5)En. Sec. 1, Ch. 14, Sp. L. November 1993; amd. Sec. 161, Ch. 418, L. 1995; amd. Sec. 443, Ch. 546, L. 1995; amd. Sec. 238, Ch. 42, L. 1997; amd. Sec. 18, Ch. 93, L. 1997.**

53-6-111. Department charged with administration and supervision of medical assistance program — overpayment recovery — sanctions for fraudulent and abusive activities — adoption of rules. (1) The department of public health and human services may administer and supervise a vendor payment program of medical assistance under the powers, duties, and functions provided in Title 53, chapter 2, and this chapter and that is in compliance with Title XIX of the Social Security Act.

(2) (a) The department is entitled to collect from a provider, and a provider is liable to the department for:

(i) the amount of a payment under this part to which the provider was not entitled, regardless of whether the incorrect payment was the result of department or provider error or other cause; and

(ii) the portion of any interim rate payment that exceeds the rate determined retrospectively by the department for the rate period.

(b) In addition to the amount of overpayment recoverable under subsection (2)(a), the department is entitled to interest on the amount of the overpayment at the rate specified in 31-1-106 from the date 30 days after the date of mailing of notice of the overpayment by the department to the provider, except that interest accrues from the date of the incorrect payment when the payment was obtained by fraud or abuse.

(c) The department may collect any amount described in subsection (2)(a) by:

(i) withholding current payments to offset the amount due;

(ii) applying methods and using a schedule mutually agreeable to the department and the provider; or

(iii) any other legal means.

(d) The department may suspend payments to a provider for disputed items pending resolution of a dispute.

(e) The fact that a provider may have ceased providing services or items under the medical assistance program, may no longer be in business, or may no longer operate a facility, practice, or business does not excuse repayment under this subsection (2).

(3) The department shall adopt rules establishing a system of sanctions applicable to providers who engage in fraud and abuse. Subject to the definitions in 53-6-155, the department rules must include but are not limited to specifications regarding the activities and conduct that constitute fraud and abuse.

(4) Subject to subsections (5) and (6), the sanctions imposed under rules adopted by the department under subsection (3) may include but are not limited to:

(a) required courses of education in the rules governing the medicaid program;

(b) suspension of participation in the program for a specified period of time;

(c) permanent termination of participation in the medical assistance program; and

(d) imposition of civil monetary penalties imposed under rules that specify the amount of penalties applicable to a specific activity, act, or omission involving intentional or knowing violation of specified standards.

(5) In all cases in which the department may recover medicaid payments or impose a sanction, a provider is entitled to a hearing under the provisions of Title 2, chapter 4, part 6. This section does not require that the hearing under Title 2, chapter 4, part 6, be granted prior to recovery of overpayment.

(6) The remedies provided by this section are separate and cumulative to any other administrative, civil, or criminal remedies available under state or federal law, regulation, rule, or policy.

History: En. Sec. 1, Ch. 325, L. 1967; amd. Secs. 47, 48, Ch. 121, L. 1974; R.C.M. 1947, 71-1511(1); amd. Sec. 1, Ch. 276, L. 1979; amd. Sec. 15, Ch. 354, L. 1995; amd. Sec. 444, Ch. 546, L. 1995.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Fraud, 28-2-404 through 28-2-406.

False claims to public agencies, 45-7-210.

Community-based long-term care facilities — powers and duties of Department, 53-6-402.

53-6-112. Department to print and distribute copies of part and certain forms. The department of public health and human services shall have printed and distribute copies of this part to all county welfare departments and shall prescribe the form of and print and supply to the county welfare departments blanks of applications, reports, and other forms as may be necessary in relation to medical assistance.

History: En. Sec. 1, Ch. 325, L. 1967; amd. Secs. 47 and 48, Ch. 121, L. 1974; R.C.M. 1947, 71-1511(4); amd. Sec. 445, Ch. 546, L. 1995.

53-6-113. Department to adopt rules. (1) The department of public health and human services shall adopt appropriate rules necessary for the administration of the Montana medicaid program as provided for in this part and as may be required by federal laws and regulations governing state participation in medicaid under Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as amended.

(2) The department shall adopt rules as are necessary to further define for the purposes of this part the services provided under 53-6-101 and to provide that services being used are medically necessary and that the services are the most efficient and cost-effective available. The rules may establish the amount, scope, and duration of services provided under the Montana medicaid program, including the items and components constituting the services.

(3) The department shall establish by rule the rates for reimbursement of services provided under this part. The department may in its discretion set rates of reimbursement that it determines necessary for the purposes of the program. In establishing rates of reimbursement, the department may consider but is not limited to considering:

(a) the availability of appropriated funds;

(b) the actual cost of services;

(c) the quality of services;

(d) the professional knowledge and skills necessary for the delivery of services; and

(e) the availability of services.

(4) The department shall specify by rule those professionals who may deliver or direct the delivery of particular services.

(5) The department may provide by rule for payment by a recipient of a portion of the reimbursements established by the department for services provided under this part.

(6) The department may adopt rules consistent with this part to govern eligibility for the Montana medicaid program. Rules may include but are not limited to financial standards and criteria for income and resources, treatment of resources, nonfinancial criteria, family responsibilities, residency, application, termination, definition of terms, confidentiality of applicant and recipient information, and cooperation with the state agency administering the child support enforcement program under Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq.

(7) The department may adopt rules limiting eligibility based on criteria more restrictive than that provided in 53-6-131 if required by Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, or if funds appropriated are not sufficient to provide medical care for all eligible persons.

(8) The department may adopt rules necessary for the administration of medicaid managed-care systems. Rules to be adopted may include but are not limited to rules concerning:

(a) participation in managed care;

(b) selection and qualifications for providers of managed care; and

(c) standards for the provision of managed care.

(9) The department shall establish by rule income limits for eligibility for extended medical assistance of persons receiving benefits from FAIM financial assistance, as defined in 53-4-702, as participants of the FAIM project who lose eligibility because of increased income, as provided in 53-6-134, and shall also establish by rule the length of time for which extended medical assistance will be provided. The department, in exercising its discretion to set income limits and duration of assistance, may consider the amount of funds appropriated by the legislature for the FAIM project.

History: **En. Sec. 1, Ch. 325, L. 1967; amd. Secs. 47 and 48, Ch. 121, L. 1974; R.C.M. 1947, 71-1511(6); amd. Sec. 4, Ch. 310, L. 1989; amd. Sec. 5, Ch. 711, L. 1989; amd. Sec. 4, Ch. 460, L. 1991; amd. Sec. 26, Ch. 491, L. 1995; amd. Sec. 446, Ch. 546, L. 1995; amd. Sec. 47, Ch. 486, L. 1997.**

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Health care facility — rules governing sanctions or remedies, 53-6-108.

53-6-114. Rules of department binding on county welfare departments. All rules of the department of public health and human services made under this part are binding upon the county departments of public welfare.

History: **En. Sec. 1, Ch. 325, L. 1967; amd. Secs. 47 and 48, Ch. 121, L. 1974; R.C.M. 1947, 71-1511(5); amd. Sec. 447, Ch. 546, L. 1995.**

53-6-115. Contracts with other agencies. The department of public health and human services may by suitable rules provide for contracting with any state or private agency for processing and payment of claims under the program of medical assistance, and the department may contract with one or more private or state agencies to provide any or all of the enumerated medical services.

History: En. Sec. 5, Ch. 325, L. 1967; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 71-1515; amd. Sec. 448, Ch. 546, L. 1995.

53-6-116. Medicaid managed care — capitated health care. (1) The department of public health and human services, in its discretion, may develop managed-care and capitated health care systems for medicaid recipients.

(2) The department may contract with one or more persons for the management of comprehensive physical health services and the management of comprehensive mental health services for medicaid recipients. The department may contract for the provision of these services by means of a fixed monetary or capitated amount per recipient.

(3) A managed-care system is a program organized to serve the medical needs of medicaid recipients in an efficient and cost-effective manner by managing the receipt of medical services for a geographical or otherwise defined population of recipients through appropriate health care professionals.

(4) The provision of medicaid services through managed-care and capitated health care systems is not subject to the limitations provided in 53-6-101 and 53-6-104.

(5) The proposed systems, referred to in subsection (1), must be submitted to the legislative finance committee. The legislative finance committee shall review the proposed systems at its next regularly scheduled meeting and shall provide any comments concerning the proposed systems to the department of public health and human services.

History: En. Sec. 1, Ch. 460, L. 1991; amd. Sec. 2, Ch. 31, Sp. L. November 1993; amd. Sec. 449, Ch. 546, L. 1995.

53-6-117. Participation requirements. (1) The department of public health and human services may require medicaid recipients to participate in a managed-care system.

(2) Recipients who are required by the department to participate in a managed-care system shall participate as required in order to remain eligible for medicaid.

(3) The department may require the participation of medicaid recipients in managed-care systems based upon geographical, financial, social, medical, and other factors as the department may determine are relevant to the development and efficient management of managed-care systems.

History: En. Sec. 2, Ch. 460, L. 1991; amd. Sec. 450, Ch. 546, L. 1995.

53-6-118 through 53-6-120 reserved.

53-6-121. County department charged with local administration of medical assistance. The county department of public welfare shall be charged with the local administration and supervision of medical assistance subject to the powers, duties, and functions prescribed for the county department in chapter 2 of this title.

History: En. Sec. 1, Ch. 325, L. 1967; amd. Secs. 47 and 48, Ch. 121, L. 1974; R.C.M. 1947, 71-1511(2).

Cross-References

State assumption of county public assistance programs, Title 53, ch. 2, part 8.

53-6-122 through 53-6-130 reserved.

53-6-131. Eligibility requirements. (1) Medical assistance under the Montana medicaid program may be granted to a person who is determined by the department of public health and human services, in its discretion, to be eligible as follows:

(a) The person receives or is considered to be receiving supplemental security income benefits under Title XVI of the Social Security Act, 42 U.S.C. 1381, et seq., and does not have income or resources in excess of the applicable medical assistance limits or receive from FAIM financial assistance, as defined in 53-4-702, benefits under Title IV of the federal Social Security Act, 42 U.S.C. 601, et seq.

(b) The person would be eligible for assistance under a program described in subsection (1)(a) if that person were to apply for that assistance.

(c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility, the person would be receiving assistance under one of the programs in subsection (1)(a).

(d) The person is under 19 years of age and meets the conditions of eligibility in the state plan, as defined in 53-4-201, other than with respect to age and school attendance.

(e) The person is under 21 years of age and in foster care under the supervision of the state or was in foster care under the supervision of the state and has been adopted as a child with special needs.

(f) The person meets the nonfinancial criteria of the categories in subsections (1)(a) through (1)(e) and:

(i) the person's income does not exceed the income level specified for federally aided categories of assistance and the person's resources are within the resource standards of the federal supplemental security income program; or

(ii) the person, while having income greater than the medically needy income level specified for federally aided categories of assistance:

(A) has an adjusted income level, after incurring medical expenses, that does not exceed the medically needy income level specified for federally aided categories of assistance or, alternatively, has paid in cash to the department the amount by which the person's income exceeds the medically needy income level specified for federally aided categories of assistance; and

(B) has resources that are within the resource standards of the federal supplemental security income program.

(g) The person is a qualified pregnant woman or child as defined in 42 U.S.C. 1396d(n).

(2) The department may establish income and resource limitations. Limitations of income and resources must be within the amounts permitted by federal law for the medicaid program.

(3) The Montana medicaid program shall pay, as required by federal law, the premiums necessary for medicaid-eligible persons participating in the medicare program and may, within the discretion of the department, pay all or a portion of the medicare premiums, deductibles, and coinsurance for a qualified medicare-eligible person or for a qualified disabled and working individual, as defined in section 6408(d)(2) of the federal Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, who:

(a) has income that does not exceed income standards as may be required by the Social Security Act; and

(b) has resources that do not exceed standards that the department determines reasonable for purposes of the program.

(4) The department may pay a medicaid-eligible person's expenses for premiums, coinsurance, and similar costs for health insurance or other available health coverage, as provided in 42 U.S.C. 1396b(a)(1).

(5) In accordance with waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may grant eligibility for basic medicaid benefits as described in 53-6-101 to an individual receiving FAIM financial assistance, as defined in 53-4-702, as the specified caretaker relative of a dependent child under the FAIM project and to all adult recipients of medical assistance only who are covered under a group related to the program of FAIM financial assistance. A recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage as provided in 53-6-101.

(6) The department, under the Montana medicaid program, may provide, if a waiver is not available from the federal government, medicaid and other assistance mandated by Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, and not specifically listed in this part to categories of persons that may be designated by the act for receipt of assistance.

(7) Notwithstanding any other provision of this chapter, medical assistance must be provided to infants and pregnant women whose family income does not exceed 133% of the federal poverty threshold, as provided in 42 U.S.C. 1396a(a)(10)(A)(ii)(IX) and 42 U.S.C. 1396a(l)(2)(A)(i), and whose family resources do not exceed standards that the department determines reasonable for purposes of the program.

(8) Subject to appropriations, the department may cooperate with and make grants to a nonprofit corporation that uses donated funds to provide basic preventive and primary health care medical benefits to children whose families are ineligible for the Montana medicaid program and who are ineligible for any other health care coverage, are under 19 years of age, and are enrolled in school if of school age.

(9) A person described in subsection (7) must be provided continuous eligibility for medical assistance, as authorized in 42 U.S.C. 1396a(e)(5) through a(e)(7).

(10) The department may establish resource and income standards of eligibility for mental health services that are more liberal than the resource and income standards of eligibility for physical health services. The standards for eligibility for mental health services may provide for eligibility for households not eligible for medicaid with family income that does not exceed 200% of the federal poverty threshold or that does not exceed a lesser amount determined in the discretion of the department. The department may by rule specify under what circumstances deductions for medical expenses should be used to reduce countable family income in determining eligibility. The department may also adopt rules establishing fees, premiums, or copayments

to be charged recipients for services. The fees, premiums, or copayments may vary according to family income.

History: **En. Sec. 6, Ch. 325, L. 1967; amd. Sec. 2, Ch. 261, L. 1971; amd. Sec. 1, Ch. 20, L. 1973; amd. Sec. 2, Ch. 277, L. 1973; amd. Sec. 38, Ch. 37, L. 1977; R.C.M. 1947, 71-1516; amd. Sec. 1, Ch. 399, L. 1981; amd. Sec. 155, Ch. 370, L. 1987; amd. Sec. 1, Ch. 310, L. 1989; amd. Sec. 11, Ch. 649, L. 1989; amd. Sec. 2, Ch. 388, L. 1991; amd. Sec. 5, Ch. 634, L. 1991; amd. Sec. 1, Ch. 230, L. 1993; amd. Sec. 3, Ch. 14, Sp. L. November 1993; amd. Sec. 27, Ch. 491, L. 1995; amd. Sec. 1, Ch. 544, L. 1995; amd. Sec. 451, Ch. 546, L. 1995; amd. Sec. 8, Ch. 590, L. 1995; amd. Sec. 48, Ch. 486, L. 1997; amd. Sec. 7, Ch. 21, L. 1999; amd. Sec. 5, Ch. 577, L. 1999.**

Compiler's Comments

1999 Amendments — Composite Section: Chapter 21 in (1)(e) substituted "child with special needs" for "hard-to-place child". Amendment effective October 1, 1999.

Chapter 577 in (10) in second sentence after "households" inserted "not eligible for medicaid", in fourth sentence after "fees" inserted "premiums, or copayments", and in fifth sentence after "fees" inserted "premiums, or copayments". Amendment effective May 6, 1999.

Cross-References

Montana Initiative for the Abatement of Mortality in Infants (MIAMI) Act, Title 50, ch. 19, part 3.

53-6-132. Application for assistance — exception. (1) Except as provided in subsection (2), application for assistance under this part must be made to the office of the county department in the county in which the person is residing. The application must be presented in the manner and on the form prescribed by the department of public health and human services. All individuals wishing to apply must have the opportunity to do so.

(2) Notwithstanding the provisions of subsection (1), the department may designate an entity other than the county department to determine eligibility for medicaid managed care services.

History: **En. Sec. 8, Ch. 325, L. 1967; R.C.M. 1947, 71-1518; amd. Sec. 452, Ch. 546, L. 1995; amd. Sec. 9, Ch. 590, L. 1995.**

Cross-References

Fraudulently obtaining public assistance — theft, 53-2-107.

53-6-133. Investigation and determination of eligibility. (1) The county department shall promptly investigate and determine the eligibility of each applicant under this part in accordance with the rules of the department of public health and human services. Each applicant must be informed of the right to a fair hearing and of the confidential nature of the information given. The county department shall determine whether or not the applicant is eligible for assistance under this part, and aid must be furnished promptly to eligible persons. Each applicant shall receive written notice of the decision concerning the applicant's application, and the right of appeal is secured to the applicant under the procedures of 53-2-606.

(2) The county departments of public welfare and the department of public health and human services may accept the federal social security administration's determination of eligibility for supplemental security income, Title XVI of the Social Security Act, as qualifying the eligible individuals to receive medical assistance under this part.

History: **En. Sec. 10, Ch. 325, L. 1967; amd. Sec. 1, Ch. 181, L. 1974; amd. Sec. 1, Ch. 327, L. 1977; R.C.M. 1947, 71-1520; amd. Sec. 2, Ch. 310, L. 1989; amd. Sec. 453, Ch. 546, L. 1995.**

Cross-References
Contested cases, Title 2, ch. 4, part 6.

53-6-134. Extension of eligibility for medical assistance to persons terminated from FAIM financial assistance. (1) In providing for the extension of eligibility for medical assistance under subsection (2), the department may provide for health insurance or other health coverage in accordance with subsections 1925(a)(4)(B) and 1925(b)(4)(C) of Title XIX of the Social Security Act, 42 U.S.C. 1396r-6(a)(4)(B) and 42 U.S.C. 1396r-6(b)(4)(C), and may exercise the other options contained in section 1925 of Title XIX of the Social Security Act, 42 U.S.C. 1396r-6, regarding the provision of medical assistance.

(2) In accordance with waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may provide extended eligibility for medical assistance for a period of time established by the department by rule for persons receiving FAIM financial assistance, as defined in 53-4-702, under the job supplement program, pathways, or community services program components of the FAIM project described in 53-4-603 who lose eligibility because of increased income from any source or because of exhausting time-limited earned income disregards, provided that the family's income does not exceed a percentage of the federal poverty level established by the department by rule. The department, in exercising its discretion to establish income standards and duration of extended medical assistance by rule, may consider the amount of funds appropriated by the legislature for the FAIM project.

History: En. Sec. 1, Ch. 453, L. 1989; amd. Sec. 28, Ch. 491, L. 1995; amd. Sec. 454, Ch. 546, L. 1995; amd. Sec. 49, Ch. 486, L. 1997.

53-6-135 through 53-6-138 reserved.

53-6-139. Terminated. Sec. 9, Ch. 616, L. 1989.

History: En. Sec. 2, Ch. 616, L. 1989.

53-6-140. Account not to be treated as asset for purposes of eligibility. If allowed by federal law, the principal and all interest or other income contained within an account established in accordance with Title 15, chapter 61, may not be treated as an asset of the employee or account holder or as an asset of a dependent of the employee or account holder for the purposes of eligibility for the Montana medicaid program.

History: En. Sec. 9, Ch. 295, L. 1995.

53-6-141. Repealed. Sec. 8, Ch. 711, L. 1989.

History: En. Sec. 7, Ch. 325, L. 1967; amd. Sec. 3, Ch. 261, L. 1971; amd. Sec. 2, Ch. 20, L. 1973; R.C.M. 1947, 71-1517; amd. Sec. 1, Ch. 562, L. 1979; amd. Sec. 112, Ch. 370, L. 1987; amd. Sec. 3, Ch. 310, L. 1989.

53-6-142. Periodic review of assistance. All medical assistance cases approved under this part must be reviewed as often as required under the rules of the department of public health and human services.

History: En. Sec. 11, Ch. 325, L. 1967; R.C.M. 1947, 71-1521; amd. Sec. 455, Ch. 546, L. 1995.

53-6-143. *(Temporary)* **Medical assistance liens and recoveries.** (1) Except as provided in this section, the department may not impose a lien upon the property of an applicant for or recipient of medical assistance.

(2) A lien for recovery of medical assistance paid or to be paid under this chapter may be imposed against the real or personal property of a medicaid applicant or recipient prior to the applicant's or recipient's death only:

(a) pursuant to a judgment of a court for recovery of medical assistance paid on behalf of the recipient;

(b) on a third-party recovery as provided in 53-2-612; or

(c) as provided in 53-6-171 through 53-6-188.

(3) The department may recover medical assistance correctly paid on behalf of a recipient only as provided in 53-2-612, 53-6-167 through 53-6-169, or 53-6-171 through 53-6-188 or as provided in a written agreement between the department and the recipient or the recipient's representative pursuant to 42 U.S.C. 1382b(b).

(4) Except as otherwise specifically provided by 53-6-144, 53-6-165 through 53-6-169, 53-6-171 through 53-6-189, and this section, the department may pursue recovery under any section or combination of sections as may be applicable in a particular case. However, the department may not recover pursuant to 53-6-167 through 53-6-169 or 53-6-171 through 53-6-188 more than the total amount of recoverable medical assistance paid on behalf of a recipient, plus any applicable costs, interest, or other charges specifically allowed by law. The fact that the department has or may have a lien on particular property does not preclude the department from pursuing recovery under another section against other assets of the recipient or assets of another person as provided in 53-6-144, 53-6-165 through 53-6-169, 53-6-171 through 53-6-189, and this section.

(5) Except as provided in subsections (5)(a) and (5)(b), the department may not impose a lien under this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.

(a) The department may impose a lien under this section upon a self-sufficiency trust or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is required by federal law to recover or collect from the trust or its assets as a condition of receiving federal financial participation for the medicaid program.

(b) To the extent otherwise permitted by this section, the department is not precluded from asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any transfer of the property to the trust is subject to the lien.

53-6-143. *(Effective six months after occurrence of contingency)* **Medical assistance liens and recoveries.** (1) Except as provided in this section, the department may not impose a lien upon the property of an applicant for or recipient of medical assistance.

(2) A lien for recovery of medical assistance paid or to be paid under this chapter may be imposed against the real or personal property of a medicaid applicant or recipient prior to the applicant's or recipient's death only:

(a) pursuant to a judgment of a court for recovery of medical assistance paid on behalf of the recipient;

(b) on a third-party recovery as provided in 53-2-612;

(c) as provided in 53-6-171 through 53-6-188; or

(d) to the extent that the recipient has received medical assistance based upon resources not disregarded pursuant to part 8 of this chapter.

(3) The department may recover medical assistance correctly paid on behalf of a recipient only as provided in 53-2-612, 53-6-167 through 53-6-169, or 53-6-171 through 53-6-188 or as provided in a written agreement between the department and the recipient or the recipient's representative pursuant to 42 U.S.C. 1382b(b).

(4) Except as otherwise specifically provided by 53-6-144, 53-6-165 through 53-6-169, 53-6-171 through 53-6-189, and this section, the department may pursue recovery under any section or combination of sections as may be applicable in a particular case. However, the department may not recover pursuant to 53-6-167 through 53-6-169 or 53-6-171 through 53-6-188 more than the total amount of recoverable medical assistance paid on behalf of a recipient, plus any applicable costs, interest, or other charges specifically allowed by law. The fact that the department has or may have a lien on particular property does not preclude the department from pursuing recovery under another section against other assets of the recipient or assets of another person as provided in 53-6-144, 53-6-165 through 53-6-169, 53-6-171 through 53-6-189, and this section.

(5) Except as provided in subsections (5)(a) and (5)(b), the department may not impose a lien under this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.

(a) The department may impose a lien under this section upon a self-sufficiency trust or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is required by federal law to recover or collect from the trust or its assets as a condition of receiving federal financial participation for the medicaid program.

(b) To the extent otherwise permitted by this section, the department is not precluded from asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any transfer of the property to the trust is subject to the lien.

History: En. Sec. 14, Ch. 325, L. 1967; amd. Sec. 1, Ch. 249, L. 1969; amd. Sec. 1, Ch. 279, L. 1974; amd. Sec. 5, Ch. 379, L. 1977; R.C.M. 1947, 71-1524; amd. Sec. 2, Ch. 482, L. 1989; amd. Sec. 3, Ch. 492, L. 1995; amd. Sec. 456, Ch. 546, L. 1995; amd. Sec. 6, Ch. 195, L. 1997; amd. Sec. 4, Ch. 262, L. 1997.

Compiler's Comments

Contingent Effective Date: Section 8, Ch. 195, L. 1997, provided: "(1) [Sections 4, 5, and 7 and this section] [53-6-804, 53-6-805, and the codification instruction] are effective on the effective date of the repeal of 42 U.S.C. 1396p(b)(1)(A) and (b)(1)(B) or of the amendment of that section in a manner prohibiting adjustment or recovery of medical assistance paid to individuals described in that section.

(2) [Sections 1 through 3 and 6] [53-6-801 through 53-6-803 and amendments to 53-6-143] are effective 6 months after [the effective date of sections 4 and 5] [53-6-804 and 53-6-805]."

Cross-References

Liens, Title 71, ch. 3.

Claims against estate, Title 72, ch. 3, part 8.

53-6-144. Relative's responsibility. Except as otherwise provided in 53-6-167 through 53-6-169, 53-6-171 through 53-6-189, and the provisions of other parts of this title, the only relatives that may be held responsible for payment of medical assistance under the program are the husband or wife of the individual, the parents of children under 18 years of age, and the parents of blind or disabled persons over 18 years of age.

History: En. Sec. 15, Ch. 325, L. 1967; amd. Sec. 15, Ch. 423, L. 1971; R.C.M. 1947, 71-1525; amd. Sec. 4, Ch. 492, L. 1995.

Cross-References

Liability for acts or debts of spouse, 40-2-106.

When parent liable for necessaries supplied to child, 40-6-215.

Duty of child to support indigent parents, 40-6-301.

53-6-145. Agencies to adopt rules governing personal assistant services. (1) Recognizing the importance of consumer control over personal assistance services in a self-directed service model, the legislature directs the department of public health and human services and the department of labor and industry to adopt administrative rules authorizing a person with a disability to act as though the person is the employer, for the purposes of selection, management, and supervision, of a personal assistant, although the personal assistant is the employee of another person or entity. The rules must reflect both the rights and protection guaranteed to workers under existing labor law and ensure that consumers of personal assistant services have day-to-day control, supervision, and direction over those services.

(2) As used in this section, the following definitions apply:

(a) "Ancillary services" means services ancillary to basic services provided to an individual in need of home-based care who needs one or more of the following basic services:

(i) homemaker-type services, including but not limited to shopping, laundry, cleaning, and seasonal chores;

(ii) companion-type services, including but not limited to transportation, letter writing, reading mail, assisting with alternative communication, and escort; and

(iii) assistance with cognitive tasks, including but not limited to managing finances, planning activities, prompting, and problem solving.

(b) "Basic services" includes assistance:

(i) getting in and out of bed, a wheelchair, or a motor vehicle; and

(ii) with routine bodily functions including:

(A) health maintenance activities;

(B) bathing and personal hygiene;

(C) dressing and grooming;

(D) feeding, including preparation and cleanup; and

(E) setup, use, and maintenance of assistive technologies.

(c) "Individual in need of home-based services" means an individual with a physical or mental impairment who requires assistance in completing functions of daily living, self-care, and mobility.

(d) "Personal assistant services" means those basic and ancillary services that enable an individual in need of home-based care to live in the individual's home and community rather than in an institution and to carry out functions of daily living, self-care, and mobility.

(3) The department of public health and human services is not required to provide personal care services as part of the medicaid program in a self-directed service model as described in this section unless the personal assistant is an employee of an entity willing to provide the protections guaranteed to workers under existing labor laws, including but not limited to the payment of workers' compensation and unemployment insurance premiums.

(4) This section does not prohibit the department of public health and human services from determining the amount, scope, and duration of the personal assistance services provided under the medicaid program, nor does this section mandate personal assistance services.

(5) Medical and related liability for personal care services provided pursuant to this section rests with the person directing the services.

History: En. Sec. 1, Ch. 525, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-6-146 through 53-6-149 reserved.

53-6-150. Donated funds. The department of public health and human services may receive private funds and nonfederal and nonstate public funds for its medical assistance programs. Donated funds must be matched with federal funds whenever possible.

History: En. Sec. 1, Ch. 164, L. 1987; amd. Sec. 457, Ch. 546, L. 1995; amd. Sec. 46, Ch. 422, L. 1997.

53-6-151 through 53-6-154 reserved.

53-6-155. Definitions. As used in this part, unless expressly provided otherwise, the following definitions apply:

(1) "Abuse" means conduct by an applicant, recipient, provider, or other person involving disregard of and an unreasonable failure to conform with the statutes, regulations, and rules governing the medical assistance program when the disregard or failure results or may result in an incorrect determination that a person is eligible for medical assistance or payment by a medicaid agency of medical assistance payments to which the provider is not entitled.

(2) "Applicant" means a person:

(a) who has submitted an application for determination of medicaid eligibility to a medicaid agency on the person's own behalf or on behalf of another person; or

(b) on whose behalf an application has been submitted.

(3) "Benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.

(4) "Claim" means a communication, whether in oral, written, electronic, magnetic, or other form, that is used to claim specific services or items as payable or reimbursable under the medicaid program or that states income, expense, or other information that is or may be used to determine entitlement

to or the rate of payment under the medicaid program. The term includes any documents submitted as part of or in support of the claim.

(5) "Department" means the department of public health and human services provided for in 2-15-2201.

(6) "Document" means any application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, or other form.

(7) "Fraud" means any conduct or activity prohibited by statute, regulation, or rule involving purposeful or knowing conduct or omission to perform a duty that results in or may result in medicaid payments or benefits to which the applicant, recipient, or provider is not entitled. Fraud includes but is not limited to any conduct or omission under the medicaid program that would constitute a criminal offense under Title 45, chapter 6 or 7.

(8) "Medicaid" means the Montana medical assistance program established under Title 53, chapter 6.

(9) "Medicaid agency" means any agency or entity of state, county, or local government that administers any part of the medicaid program, whether under direct statutory authority or under contract with an authorized agency of the state or federal government. The term includes but is not limited to the department, the department of corrections, county offices of human services and public welfare, and other local and state agencies and their agents, contractors, and employees, when acting with respect to medicaid eligibility, claims processing or payment, utilization review, case management, provider certification, investigation, or other administration of the medicaid program.

(10) "Misappropriation of patient property" means exploitation, deliberate misplacement, or wrongful use or taking of a patient's property, whether temporary or permanent, without authorization by the patient or the patient's designated representative. Misappropriation of patient property includes but is not limited to any conduct with respect to a patient's property that would constitute a criminal offense under Title 45, chapter 6, part 3.

(11) "Patient abuse" means the willful infliction of physical or mental injury of a patient or unreasonable confinement, intimidation, or punishment that results in pain, physical or mental harm, or mental anguish of a patient. Patient abuse includes but is not limited to any conduct with respect to a patient that would constitute a criminal offense under Title 45, chapter 5.

(12) "Patient neglect" means a failure, through inattentiveness, carelessness, or other omission, to provide to a patient goods and services necessary to avoid physical harm, mental anguish, or mental illness when an omission is not caused by factors beyond the person's control or by good faith errors in judgment. Patient neglect includes but is not limited to any conduct with respect to a patient that would constitute a criminal offense under 45-5-208.

(13) "Provider" means an individual, company, partnership, corporation, institution, facility, or other entity or business association that has enrolled or applied to enroll as a provider of services or items under the medical assistance program established under this part.

(14) "Recipient" means a person:

(a) who has been determined by a medicaid agency to be eligible for medicaid benefits, whether or not the person actually has received any benefits; or

(b) who actually receives medicaid benefits, whether or not determined eligible.

(15) (a) "Records" means medical, professional, business, or financial information and documents, whether in written, electronic, magnetic, microfilm, or other form:

(i) pertaining to the provision of treatment, care, services, or items to a recipient;

(ii) pertaining to the income and expenses of the provider; or

(iii) otherwise relating to or pertaining to a determination of eligibility for or entitlement to payment or reimbursement under the medicaid program.

(b) The term includes all records and documents, regardless of whether the records are required by medicaid laws, regulations, rules, or policies to be made and maintained by the provider.

History: **En. Sec. 1, Ch. 354, L. 1995.**

53-6-156. Medicaid fraud control unit. (1) There is a medicaid fraud control unit in the department of justice. The unit is under the supervision and control of the attorney general and, subject to the availability of appropriated funds, consists of the agents and employees of the department of justice whom the attorney general considers necessary and appropriate, including but not limited to:

(a) persons qualified by education, training, experience, and high professional competence in criminal and civil investigative procedures;

(b) at least one person licensed to practice law in Montana and qualified by education, training, experience, and high professional competence to prosecute crimes; and

(c) auditors and other additional professional and support staff.

(2) The medicaid fraud control unit is a criminal justice agency within the meaning of 44-5-103. Agents designated by the attorney general have peace officer status and authority, including but not limited to search, seizure, and arrest.

History: **En. Sec. 2, Ch. 354, L. 1995.**

53-6-157. Powers and duties of medicaid fraud control unit. (1) The medicaid fraud control unit shall:

(a) investigate and prosecute under applicable criminal statutes fraud and abuse by applicants, recipients, providers, or other persons under the medical assistance program established under this chapter, including but not limited to cases referred by the department;

(b) review any complaint of patient abuse, patient neglect, and misappropriation of patient property by providers or their employees or agents and, when appropriate, shall investigate and initiate criminal proceedings or refer the complaint to another state agency for action;

(c) refer to the department for collection and, when appropriate, consideration and imposition of appropriate recipient restrictions or provider sanctions cases involving recipient or provider overpayments, fraud, abuse, inappropriate use of services, or other improper activities discovered by the unit in carrying out its activities;

(d) communicate and cooperate with and, subject to applicable confidentiality laws, provide information to other state and federal agencies involved in the investigation and prosecution of health care fraud, abuse, and other improper activities related to the medicaid program;

(e) transmit to other state and federal agencies, in accordance with law reports of convictions, copies of judgments and sentences imposed and other information and documents for purposes of program exclusions or other sanctions or penalties under medicaid, medicare, or other state or federal benefit or assistance programs; and

(f) recommend to state agencies appropriate or necessary adoption or revision of statutes, regulations, rules, policies, and procedures to prevent fraud, abuse, and other improper activities under the medicaid program and to aid in the investigation and prosecution of fraud, abuse, and other improper activities under the medicaid program.

(2) The medicaid fraud control unit may:

(a) initiate criminal prosecutions related to the medicaid program in any court of competent jurisdiction in the state of Montana;

(b) upon written request, obtain information and records from applicants, recipients, and providers;

(c) exercise the authority granted to prosecutors with respect to criminal investigative subpoenas under Title 46, chapter 4, part 3;

(d) subject to applicable federal confidentiality laws and regulations and for purposes related to any investigation or prosecution related to the medicaid program, obtain from the department, county welfare and human services offices, and other local, county, or state government departments or agencies records and other information, including but not limited to applicant and recipient applications, provider enrollment forms, claims and reports, individual or entity tax returns, or other information provided to or in the possession of the department of revenue or the state auditor;

(e) refer appropriate cases to other state or federal agencies for investigation, prosecution, or imposition of penalties, restrictions, or sanctions;

(f) enter into agreements with the department and other state and federal agencies in furtherance of the unit's mission; and

(g) do all things necessary to comply with 42 U.S.C. 1396a(a)(61) and 42 U.S.C. 1396b(q) and any implementing federal regulations and policies that require the state to operate a medicaid fraud control unit.

History: En. Sec. 3, Ch. 354, L. 1995.

Cross-References

Fraudulent obtaining of public assistance treated as theft, 53-2-107.

Overpayment of assistance — civil penalty when fraud, 53-2-108.

53-6-158. Cooperation of governmental agencies with medicaid fraud control unit. All local, county, and state departments and agencies shall cooperate with the medicaid fraud control unit and its agents and employees to effectuate the purposes of the unit.

History: En. Sec. 4, Ch. 354, L. 1995.

53-6-159. Permitted disclosure of information obtained in medicaid fraud control unit investigations. Records, documents, and other information obtained in the course of an investigation by the medicaid fraud control unit or its agents, employees, or attorneys may be disclosed:

(1) in accordance with the Montana Criminal Justice Information Act of 1979, as provided in Title 44, chapter 5; and

(2) to a medicaid agency for purposes related to administration of the medicaid program.

History: En. Sec. 5, Ch. 354, L. 1995.

53-6-160. Truthfulness, completeness, and accuracy of submissions to medicaid agencies. (1) A person who submits to a medicaid agency an application, claim, report, document, or other information that is or may be used to determine eligibility for medicaid benefits, eligibility to participate as a provider, or the right to or the amount of payment under the medicaid program is considered to represent to the department, to the best of the person's knowledge and belief, that the item is genuine and that its contents, including all statements, claims, and representations contained in the document, are true, complete, accurate, and not misleading.

(2) (a) A provider has a duty to exercise reasonable care to ensure the truthfulness, completeness, and accuracy of all applications, claims, reports, documents, and other information and of all statements and representations made or submitted, or authorized by the provider to be made or submitted, to the department for purposes related to the medicaid program. The duty applies whether the applications, claims, reports, documents, other information, statements, or representations were made or submitted, or authorized by the provider to be made or submitted, on behalf of the provider or on behalf of an applicant or recipient being served by the provider.

(b) A provider has a duty to exercise reasonable care to ensure that a claim made or submitted to the department or its agents or employees for payment or reimbursement under the medicaid program is one for which the provider is entitled to receive payment and that the service or item is provided and billed according to all applicable medicaid requirements, including but not limited to identification of the appropriate procedure code or level of service and provision of the service by a person, facility, or other provider entitled to receive medicaid payment for the particular service.

(3) A person is considered to have known that a claim, statement, or representation related to the medicaid program was false if the person knew, or by virtue of the person's position, authority, or responsibility should have known, of the falsity of the claim, statement, or representation.

(4) A person is considered to have made or to have authorized to be made a claim, statement, or representation if the person:

(a) had the authority or responsibility to:

(i) make the claim, statement, or representation;

(ii) supervise another who made the claim, statement, or representation; or

(iii) authorize the making of the claim, statement, or representation, whether by operation of law, business or professional practice, or office policy or procedure; and

(b) exercised or failed to exercise that authority or responsibility and, as a direct or indirect result, the false statement was made, resulting in a claim for a service or item when the person knew or had reason to know that the person was not entitled under applicable statutes, regulations, rules, or policies to medicaid payment or benefits for the service or item or for the amount of payment requested or claimed.

(5) (a) There is an inference that a person who signs or submits a document to a medicaid agency on behalf of or in the name of a provider is authorized by the provider to do so and is acting under the provider's direction.

(b) For purposes of this section, the term "signs" includes but is not limited to the use of facsimile, computer-generated and typed, or block-letter signatures.

(6) The department shall directly or by contract provide a program of instruction and assistance to persons submitting applications, claims, reports, documents, and other information to the department concerning the completion and submission of the application, claim, report, document, or other information in a manner determined necessary by the department. The program must include:

(a) clear directions for the completion of applications, claims, reports, documents, and other information;

(b) examples of properly completed applications, claims, reports, documents, and other information;

(c) a method by which persons submitting applications, claims, reports, documents, and other information may, on a case-by-case basis, receive accurate, complete, specific, and timely advice and directions from the department before the completed applications, claims, reports, documents, and other information must be submitted to the department; and

(d) a method by which persons submitting applications, claims, reports, documents, and other information may challenge the department's interpretation or application of the manner in which the applications, claims, reports, documents, and other information must be completed.

(7) This section applies only for the purpose of civil liability under Title 53 and does not apply in a criminal proceeding.

History: En. Sec. 6, Ch. 354, L. 1995.

53-6-161 through 53-6-164. Terminated. Sec. 8, Ch. 614, L. 1991.

Compiler's Comments

Histories of Terminated Sections:

53-6-161. En. Sec. 1, Ch. 614, L. 1991.
53-6-162. En. Sec. 2, Ch. 614, L. 1991.
53-6-163. En. Sec. 3, Ch. 614, L. 1991.
53-6-164. En. Sec. 4, Ch. 614, L. 1991.

53-6-165. Definitions. As used in this part, unless expressly provided otherwise, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Recipient" means an individual who has been determined by a medicaid agency to be eligible for medicaid benefits, whether or not the individual has actually received a benefit, or an individual who has received benefits, whether or not that person has been determined to be eligible.

(3) "Recoverable medical assistance" means a payment pursuant to this part, including but not limited to a payment made for items or services provided

to and insurance premiums, deductibles, and coinsurance paid on behalf of a recipient who:

(a) during the recipient's lifetime, was an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or institution for mental disease and, with respect to that institutionalization, the department determined under 53-6-171 that the person was not reasonably expected to be discharged and return home; or

(b) was at least 55 years of age or younger if allowed by 42 U.S.C. 1396p, as may be amended, when the item or service was provided or when the insurance premium, deductible, or coinsurance was paid.

(4) "Recovery" means legal action brought for the payment or repayment of recoverable medical assistance or amounts of money paid for other purposes.

History: En. Sec. 1, Ch. 492, L. 1995.

53-6-166. Period of ineligibility for medical assistance when assets disposed of for less than fair market value — undue hardship exception — department to adopt rules. (1) The department shall, in accordance with 42 U.S.C. 1396p, as may be amended, and implementing federal regulations and policies, impose upon an applicant or recipient a period of ineligibility for medical assistance under this part when the applicant or recipient or the spouse of either directly or indirectly disposes of any assets for less than fair market value during the applicable 3-year, 5-year, or other period provided by 42 U.S.C. 1396p, as may be amended, or by other federal law.

(2) A period of ineligibility for medical assistance may not be imposed upon an applicant or recipient under this section to the extent that the department determines, in accordance with procedures specified by department rule, that the denial of eligibility would cause an undue hardship as defined by department rule.

(3) The department shall adopt rules that are consistent with 42 U.S.C. 1396p, as may be amended, and that implement federal regulations and policies to implement this section. The rules adopted under this section must include but are not limited to rules addressing the following:

(a) a description of the circumstances considered to constitute an undue hardship;

(b) the procedures by which an individual may seek an undue hardship exception;

(c) the persons entitled to an undue hardship exception; and

(d) notice and opportunity for a hearing regarding imposition of a period of ineligibility or denial of an undue hardship exception.

(4) Nothing in 53-6-143, 53-6-144, 53-6-165, 53-6-167 through 53-6-169, 53-6-171 through 53-6-189, or this section is intended to prohibit the department from adopting rules consistent with federal law that provide for a period of ineligibility for public assistance programs other than medical assistance when an applicant or recipient directly or indirectly disposes of assets for less than fair market value.

History: En. Sec. 2, Ch. 492, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-6-167. Recovery of medicaid benefits after recipient's death. (1) After the death of a recipient, the department shall execute and present a claim:

(a) against the recipient's estate, within the time specified in the published notice to creditors in the estate proceeding, for the total amount of recoverable medical assistance paid to or on behalf of the recipient; and

(b) against a person who has received property of the recipient by distribution or survival for an amount equal to the recoverable medical assistance paid on behalf of the recipient or the value of the property received by the person from the recipient by distribution or survival, whichever is less. The amount recoverable from a person with respect to property of the recipient must be reduced by the value of any property transferred to the person for less than full market value for which a period of ineligibility was imposed under 53-6-166 against the recipient during the recipient's life. The department may bring an action in district court to collect upon a claim under this subsection (1)(b).

(2) A department claim under subsection (1) must include notice of the right to seek an undue hardship exception under rules adopted by the department in accordance with subsection (7).

(3) (a) Notwithstanding any statute of limitations or other claim presentation deadline provided by law, a department claim against an estate is not barred for lack of timely presentation if it is presented in the probate proceeding within the time specified in the published notice to creditors.

(b) An action to collect a claim under subsection (1)(b) must be commenced within 3 years of the later of the recipient's death or the closing of the recipient's estate.

(4) (a) For purposes of this section, property of a deceased recipient received by distribution or survival is any real or personal property or other assets in which the recipient had any right, title, or interest immediately prior to the time of death, including but not limited to assets passing to one or more survivors, heirs, assignees, or beneficiaries of the deceased recipient through joint tenancy, tenancy in common, right of survivorship, conveyance by the recipient subject to life estate, living trust, or other arrangement. For purposes of this section, property is not received by distribution or survival to the extent that the person received the property or property interest for consideration equal to the fair market value of the property or property interest received.

(b) Property received by distribution includes but is not limited to:

(i) property from a deceased recipient's estate distributed to a person through a probated estate or a small estate administration procedure; and

(ii) property from a deceased recipient's estate otherwise distributed to or in the possession of a person through any other procedure or when a legal procedure for distribution has not been followed.

(c) Assets of a deceased recipient's estate and property of a deceased recipient received by distribution or survival are not exempt from recovery under this section because the assets or property were or may have been considered by the department as exempt income or resources for the purpose of determining eligibility for medical assistance during the recipient's lifetime.

(5) (a) The department may seek recovery under subsection (1)(a) or (1)(b), or both, with respect to a deceased recipient until its claim is satisfied

in full. Upon full satisfaction of its claim, the department may not seek further recovery and shall provide appropriate releases to the deceased recipient's estate and to other affected persons.

(b) An estate or other person is not entitled to a reduction or waiver of the department's claim on the grounds that there is or may be another person from whom recovery may be made under this section.

(6) The department may waive recovery under this section if it determines that recovery would not be cost-effective. In determining whether recovery would be cost-effective for purposes of this subsection, the department may consider but is not limited to consideration of the following factors:

(a) the estimated cost of recovery;

(b) the amount reasonably likely to be recovered;

(c) the likelihood that recovery by the department will cause a person to become eligible for public assistance; and

(d) the importance of the case or the issues in the case and the need for judicial interpretation of issues that may recur with respect to the administration or implementation of this section.

(7) (a) Upon presentation or assertion of a claim by the department under this section, the personal representative of the estate or another affected person may apply to the department, in accordance with procedures established by department rule, for a waiver of recovery based on undue hardship. The department shall waive its recovery under this section in whole or in part if it determines that recovery would result in undue hardship as defined by department rule.

(b) The department shall adopt rules that are consistent with 42 U.S.C. 1396p, as may be amended, and that implement federal regulations and policies, establishing procedures and criteria for undue hardship exceptions. The rules adopted under this section must include but are not limited to rules addressing the following:

(i) a description of the circumstances considered to constitute an undue hardship;

(ii) the procedures by which an individual may seek an undue hardship exception;

(iii) the persons entitled to an undue hardship exception; and

(iv) whether an exception is partial or temporary and the circumstances under which partial or temporary exceptions may be granted.

(c) If a person is aggrieved by a department determination on an application for an undue hardship exception, the person may assert a claim of entitlement to an undue hardship exception in any court proceeding on a department petition for allowance of an estate claim or for recovery of an amount due under this section. When a person claims entitlement to an undue hardship exception in the proceeding, the court shall make a determination on the claim for an exception based upon the department rules adopted in accordance with this section. Department denial of all or any part of the relief requested in an exception application under this section may be reviewed by a district court only as provided in this subsection (c). Denial does not grant a right to a contested case hearing or a right to judicial review under the Montana Administrative Procedure Act or the department's rules.

(8) (a) Except as provided in subsection (8)(b), if the requirements of this section are met, the department may collect upon its claim.

(b) The department may not recover under this section while there is a surviving spouse of the recipient or while there is a surviving child of the recipient who is under 21 years of age, blind, or permanently and totally disabled. This subsection (b) does not preclude the department from recovering from the recipient's estate after the death of the surviving spouse or child.

(9) All money recovered under this section from any source must be distributed to the state general fund and to the United States as required by applicable state and federal laws and regulations.

History: En. Sec. 5, Ch. 492, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Creditors' claims against estate, Title 72, ch. 3, part 8.

53-6-168. Payment of certain funds of deceased recipient to department. (1) (a) A nursing facility or a person, other than a financial institution, holding personal funds of a deceased nursing facility resident who received medicaid benefits at any time shall, within 30 days following the resident's death, pay those funds to the department.

(b) A nursing facility may satisfy a debt owed by the deceased resident to the facility from the deceased resident's personal funds that are held by the nursing facility and that would have been payable to the facility from the resident's funds. The facility shall pay the remaining funds to the department as required by this section.

(c) Funds paid to the department under this section are not considered to be property of the deceased resident's estate, and 53-6-167 does not apply to recovery of the funds by the department.

(2) For purposes of this section, a nursing facility is holding personal funds of a resident if the facility:

(a) maintains possession of the funds in the facility; or

(b) as the recipient's trustee or representative, has deposited the resident's funds in an individual or shared account in a financial institution.

(3) The department shall apply any funds received under this section proportionately to the federal and state shares of recoverable medical assistance and shall pay any remaining amount to a person entitled by law to the funds.

History: En. Sec. 6, Ch. 492, L. 1995.

53-6-169. Payment of excess burial funds or assets to department. (1) After the death of a person who at any time received medicaid benefits, a mortician, funeral director, or other person, including but not limited to the decedent's spouse, heir, devisee, or personal representative, who holds funds or other property in excess of $5,000 in value that was specifically designated and set aside for paying for the disposition of the decedent's remains and for related expenses shall, after paying for the disposition and related expenses, pay all remaining funds to the department within 30 days following the burial, cremation, or other final disposition of the decedent's remains. The funds must be paid to the department regardless of any provision in a written contract, trust, or other agreement entered into on or after July 1, 1995, directing a different disposition of the funds. Funds paid to the department under this section are not considered to be property of the decedent's estate, and 53-6-167 does not apply to recovery of the funds by the department.

(2) The department shall apply any funds received under this section proportionately to the federal and state shares of recoverable medical assistance and shall pay any remaining amount to a person entitled by law to the funds.

History: **En. Sec. 7, Ch. 492, L. 1995.**

53-6-170. *(Temporary)* **Inpatient hospital youth psychiatric benefits.** The department may authorize inpatient hospital youth psychiatric facilities to participate in the medicaid program for acute care inpatient hospital services. Payments made by the department must comply with all of the requirements of chapter 6, including but not limited to the determination of medical necessity, the diagnostic-related group rates established by the department for acute care inpatient hospital services, any travel restrictions, and exclusion of services not covered by the medicaid program. *(Terminates June 30, 2001—sec. 18, Ch. 577, L. 1999.)*

History: **En. Sec. 14, Ch. 577, L. 1999.**

Compiler's Comments

Effective Date: Section 17, Ch. 577, L. 1999, provided: "[This act] is effective on passage and approval." Approved May 6, 1999.

Termination: Section 18, Ch. 577, L. 1999, provided: "[Section 14] [enacting 53-6-170] terminates June 30, 2001."

53-6-171. Department lien upon real property of certain medicaid recipients — conditions. (1) Following notice and opportunity for hearing as provided in 53-6-172, the department shall impose a lien upon the real property, including the home, of an institutionalized recipient of recoverable medical assistance to secure the assets of the recipient for recovery of medical assistance paid on behalf of the recipient prior to, on, or after the imposition of the lien if:

(a) the recipient has been admitted to a nursing facility, an intermediate care facility for the mentally retarded, or an institution for mental disease;

(b) the property upon which a lien is being imposed is the recipient's home and the home is not lawfully resided in by:

(i) the recipient's spouse;

(ii) the recipient's child who is under 21 years of age, blind, or permanently and totally disabled; or

(iii) the recipient's sibling who was residing in the recipient's home for a period of at least 18 months immediately prior to the recipient's institutionalization; and

(c) the recipient has been determined by the department, pursuant to subsection (2), to be permanently institutionalized.

(2) A recipient is permanently institutionalized for purposes of subsection (1)(c) if the department determines that the recipient cannot reasonably be expected to be discharged from the facility and to return home. There is a rebuttable presumption that the recipient cannot reasonably be expected to be discharged from the facility and return home if the recipient or a representative of the recipient declares that there is no intent to return home or if the recipient has been institutionalized for 6 months or longer without a discharge plan. The recipient's institutionalization for a period of 6 months or longer without a

discharge plan does not give rise to the presumption if the facility was required by law to adopt a discharge plan but failed to do so. A recipient or a recipient's representative who alleges that there is a reasonable expectation of discharge from the facility and a return home has the burden of demonstrating the reasonable expectation. The reasonable expectation must be established based upon medical evidence and medical opinion. A declaration by the recipient or a recipient's representative that the recipient intends to be discharged from the facility and to return home is not alone sufficient to establish that there is a reasonable expectation of discharge from the facility and a return home.

(3) For purposes of this section, real property of a recipient includes any interest in real property that may be subject to a judgment lien.

History: En. Sec. 8, Ch. 492, L. 1995.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

53-6-172. Notice of intent to impose lien — opportunity for hearing. Before imposing a lien under 53-6-171, the department shall provide the recipient 30 days' written notice of its determination under 53-6-171(1)(c), of its intent to impose a lien, and of an opportunity for a hearing pursuant to the department's hearing procedures under Title 2, chapter 4, part 6.

History: En. Sec. 9, Ch. 492, L. 1995.

53-6-173. Contents of lien document — scope of obligation secured. (1) The lien must contain the name and address of the recipient who owns an interest in the property, a legal description of the property, and an address and telephone number of the office or representative of the department who can provide more information about the lien. The lien applies only to the property described in the lien.

(2) The lien need not be executed by or on behalf of the medicaid recipient, but it must be executed by an authorized agent or employee of the department. The execution must be acknowledged as provided in 70-21-203.

(3) The lien need not state the specific amount of medical assistance repayment owed. The lien is sufficient to secure repayment of past, current, and future recoverable medical assistance if the lien states that:

(a) the lien is imposed under 53-6-171 through 53-6-188 to secure the described property for recovery of medical assistance paid on behalf of the recipient prior to, on, and after the date of the lien; and

(b) the amount paid for recoverable medical assistance is due upon sale, transfer, or exchange of any right, title, or interest of the recipient in the property or upon the recipient's death.

History: En. Sec. 10, Ch. 492, L. 1995.

53-6-174. Filing of lien — effect of filing — priority — renewal — dissolution of lien. (1) The lien must be filed in the office of the clerk and recorder in the county in which the real property is located.

(2) Filing of the lien constitutes legal notice of the lien to all persons, including subsequent purchasers, encumbrancers, mortgagees, and other lienholders. Upon filing, the lien is prior to any earlier unrecorded interest or claim and is prior to any subsequent interest or claim, whether or not recorded. The lien is subject to any unpaid property taxes, any prior recorded mortgage,

or any other prior recorded encumbrance, interest, or claim. For purposes of recovery under 53-6-171 through 53-6-188, a sale, transfer, or exchange of the property by the recipient is considered a relinquishment of any homestead exemption under 70-32-201 and 70-32-202 of the recipient in the property subject to the lien.

(3) Except as provided in 53-6-171 through 53-6-188, the lien has the effect of a judgment lien when the lien is filed. For purposes of provisions of state laws relating to judgment liens, the department is considered the judgment creditor and the recipient or the recipient's spouse or successor in interest is considered the judgment debtor.

(4) After filing, the lien remains effective for a period of 6 years unless earlier satisfied, released, or dissolved. The department may renew a lien for one or more additional 6-year periods.

(5) If the recipient is discharged from the facility and returns home, the lien dissolves and is no longer effective unless a new lien is later imposed in accordance with 53-6-171 through 53-6-188. Following the recipient's discharge and return home, the department shall upon written request file a release of lien in the clerk and recorder's office. Dissolution of the lien under this subsection does not preclude the department from recovering under 53-6-167, 53-6-168, or 53-6-169.

(6) If the lien is imposed pursuant to 53-6-171 on the recipient's interest in jointly owned property that is subject to a right of survivorship, upon the recipient's death, the recipient's interest passes to the survivor, subject to the lien imposed pursuant to 53-6-171.

History: En. Sec. 11, Ch. 492, L. 1995.

53-6-175. Recovery of medical assistance secured by lien — application for issuance of writ of execution. (1) After the recipient's death or upon the sale, transfer, or exchange of any right, title, or interest of the recipient in the property, the department may file with the clerk of the district court in the county in which the real property is located an application for issuance of a writ of execution for levy on the real property described in the lien. The levy may be for the amount of recoverable medical assistance paid on behalf of the recipient prior to, on, and after the date of the lien, including amounts paid up to the date of sale of the property, plus interest and costs as provided by law. Costs do not include attorney fees.

(2) The application for the writ must be sworn and must contain the following:

(a) the name of the recipient, a legal description of the real property, and a description of the recipient's interest in the property;

(b) a statement that the department has imposed a lien upon the property under 53-6-171;

(c) a statement that the lien complies with the requirements of 53-6-171 through 53-6-188;

(d) the date upon which the lien was filed and the office in which it was filed;

(e) a description of the sale, transfer, exchange, or other event that entitles the department to recover;

(f) a statement that the lien has not dissolved under 53-6-174(5);

(g) the amount of recoverable medical assistance; the amount of any unreimbursed taxes, insurance costs, maintenance costs, or other costs paid under 53-6-186; and, if applicable, a statement that additional amounts may be paid up to the time that the property is sold in satisfaction of the lien;

(h) a statement that the total amount due has not been paid as of the date of the application for the writ;

(i) a statement that recovery is not prohibited by this section;

(j) the names and addresses of all persons who have a recorded interest in the property, including a recipient or recipient's estate, co-owner, purchaser, grantee, encumbrancer, mortgagee, and lienholder; and

(k) a request that a writ of execution be issued for sale of the described property if an action is not filed within the time provided for in 53-6-177.

(3) The filing of an application under this section for a writ of execution is not the filing of a legal action, and the requirements applicable to legal actions do not apply to the application or application proceedings.

History: En. Sec. 12, Ch. 492, L. 1995.

53-6-176. Notice of application — proof of notice — request for issuance of writ of execution. (1) The department shall provide notice, as required by this section, of the filing of the application for a writ of execution pursuant to 53-6-175 to all persons having a recorded interest in the property or residing lawfully on the property.

(2) The notice must contain a description of the property and must state that the department has a lien under 53-6-171 upon the described property, that the department has filed an application for a writ of execution seeking sale of the property, and that a writ will be issued unless an action challenging issuance of the writ has been filed in accordance with 53-6-177 within 60 days of the date of mailing or service of notice or first publication of notice. The department shall include with the notice a copy of the application for the writ. The notice must also include notice of the right to seek an undue hardship exception as provided in 53-6-180.

(3) (a) The department may mail a copy of the notice, postage prepaid and return receipt requested, to the name and address stated in the recorded instrument creating each person's interest in the property or, in the case of a person residing on the property, to the address of the residence on the property. Mailing as provided in this subsection (a) is sufficient notice to the addressee if the return receipt is returned to the department and indicates that the notice was received by or on behalf of the addressee.

(b) If the return receipt is not returned to the department indicating that the notice was received by or on behalf of the addressee, the department shall attempt with reasonable diligence to locate the addressee and to personally serve or mail notice to that person.

(c) If after the exercise of reasonable diligence the department is unable to locate the person owning the interest in the property, the department shall publish the notice required by subsection (2) three times, once each week for 3 successive weeks, in a newspaper published in the county in which the property is located if a newspaper is published in the county. If a newspaper is not published in the county, then publication must be in a newspaper having a general circulation in the county.

(d) With respect to a person residing lawfully on the property but having no recorded interest in the property, the notice may be delivered to the residence and delivery is sufficient notice as to that person.

(e) In the alternative, the notice and application may be personally served upon any person entitled to notice under this section.

(4) (a) After giving notice as required by this section, the department shall file with the clerk of court an affidavit describing:

(i) the manner in which notice has been provided to each person entitled to notice;

(ii) the date of mailing, personal service, or first publication of the notice; and

(iii) the date by which each person is required to file an action to challenge issuance of the writ of execution.

(b) The department shall attach to the affidavit the return receipt, the affidavit of personal service, the affidavit of publication, or other proof of service of the notice. If no action has been filed within the time required by 53-6-177, the affidavit must so state and may request immediate issuance of the writ.

History: **En. Sec. 13, Ch. 492, L. 1995.**

53-6-177. Action to challenge issuance of writ of execution. A person with a recorded interest in or residing lawfully upon the real property described in an application filed under 53-6-175, including the recipient or recipient's estate or a co-owner, purchaser, grantee, encumbrancer, mortgagee, or lienholder, or any person described in 53-6-171(1)(b) or 53-6-178(2) or (3), may, within 60 days of mailing or service of notice or first publication of notice as provided in 53-6-176, file an action in the district court in the county in which the real property is located challenging the requested issuance of a writ of execution. The court shall determine the validity or invalidity of the department's lien and order appropriate relief, including issuance of the writ or denial of the application for issuance of the writ.

History: **En. Sec. 14, Ch. 492, L. 1995.**

53-6-178. Department right of recovery — limitations. (1) Except as provided in 53-6-180, 53-6-182, and this section, the department may collect upon its lien as provided in 53-6-171 through 53-6-188.

(2) The department may not recover upon a lien imposed on the recipient's home under 53-6-171 while the recipient's sibling or child who has resided lawfully and continuously in the home for at least 1 year immediately before the recipient's institutionalization continues to lawfully reside in the home. This subsection does not preclude the department from recovering under 53-6-167, 53-6-168, or 53-6-169.

(3) The department may not recover on a lien imposed under 53-6-171 while there is a surviving spouse of the recipient or while there is a surviving child of the recipient who is under 21 years of age, blind, or permanently and totally disabled. This subsection does not preclude the department from later recovery in accordance with 53-6-181.

History: **En. Sec. 15, Ch. 492, L. 1995.**

53-6-179. Payment of amount due — periodic payments — substitute security. (1) If the total amount due to the department to satisfy a lien imposed under 53-6-171 through 53-6-188 is paid, the department may not file an application under 53-6-175, shall withdraw its application if the application has already been filed, or shall instruct the sheriff to cancel the sale proceedings.

(2) In lieu of applying for a writ of execution, the department may agree with the heirs or devisees of the recipient to accept periodic payments for the repayment of recoverable medical assistance or may agree with the recipient's surviving spouse to accept substitute security and partial payment. The department may agree to periodic payments or substitute security if the terms of agreement, including security for repayment, are acceptable to the department and if the agreement does not reduce the amount due or the likelihood of recovering the amount due. The department may delay filing an application for issuance of a writ of execution for purposes of conducting negotiations for an agreement in lieu of execution.

History: En. Sec. 16, Ch. 492, L. 1995.

53-6-180. Waiver of recovery in cases of undue hardship — rulemaking. (1) (a) A person with a recorded interest in real property subject to a lien under 53-6-171 through 53-6-188 or any other interested person may apply to the department, in accordance with procedures established by department rule, for a waiver of recovery because of undue hardship. The department shall waive its recovery under this section, in whole or in part, if it determines that recovery would result in undue hardship as defined by department rule.

(b) The department shall adopt rules, consistent with 42 U.S.C. 1396p, as may be amended, and implementing federal regulations and policies, establishing procedures and criteria for granting undue hardship exceptions under this section. The rules must include but are not limited to rules addressing the following:

(i) a description of the circumstances considered to constitute an undue hardship;

(ii) the procedures by which an individual may seek an undue hardship exception;

(iii) the persons entitled to an undue hardship exception; and

(iv) whether an exception is partial or temporary and the circumstances under which a partial or temporary exception may be granted.

(c) A person aggrieved by a department determination on an application for an undue hardship exception may assert a claim of entitlement to an undue hardship exception in an action filed under 53-6-177 to challenge issuance of the writ. If a person claims entitlement to an undue hardship exception as part of that action, the court shall make a determination on the undue hardship claim in accordance with the department's rules adopted pursuant to this section. Department denial of all or any part of the relief requested in an application for an undue hardship exception under this section may be reviewed by a district court only through filing of an action as provided in this subsection (c). Denial does not grant a right to a contested case hearing or a right to judicial review under the Montana Administrative Procedure Act or the department's rules.

(2) The department may waive recovery of recoverable medical assistance secured by a lien imposed under 53-6-171 if the department determines that

recovery would not be cost-effective. In determining whether recovery would be cost-effective, the department may consider but is not limited to consideration of the following factors:

(a) the estimated cost of recovery;

(b) the amount reasonably likely to be recovered;

(c) the likelihood that recovery by the department will cause a person to become eligible for public assistance; and

(d) the importance of the case or the issues in the case and the need for judicial interpretation of issues that may recur with respect to the administration or implementation of 53-6-171 through 53-6-188.

History: En. Sec. 17, Ch. 492, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-6-181. Delay in recovery — sale subject to lien. (1) If the department is precluded by 53-6-178(2) or (3) from recovery upon a lien imposed under 53-6-171 through 53-6-188, the department shall maintain the lien in place and upon elimination of the condition that precluded recovery, the department may recover under this section. The department may not file an application for issuance of a writ of execution to recover under this subsection more than 3 years after elimination of the last condition that precluded recovery.

(2) If upon sale, transfer, or exchange of property subject to a lien imposed pursuant to 53-6-171 through 53-6-188 the department is precluded by 53-6-178(2) or (3) from recovering upon the lien, the lien remains in effect, subject to renewal as provided in 53-6-174, and the sale, transfer, or exchange is also subject to the lien.

History: En. Sec. 18, Ch. 492, L. 1995.

53-6-182. Spouse's limited exemption from lien. (1) Subject to Title 70, chapter 32, a recipient's surviving spouse who owns a home or an interest in a home in which the spouse resides that is subject to a lien imposed under 53-6-171 through 53-6-188 is, upon sale, transfer, or exchange of the home, entitled to an exemption from the department's lien in an amount determined in accordance with this section. The exemption is in the form of:

(a) a partial release of the department's lien if the exemption amount is less than the full amount of the department's lien; or

(b) a full release of the department's lien if the exemption amount is equal to or greater than the full amount of the department's lien.

(2) The amount of the exemption is the lesser of an amount equal to:

(a) the fair market value of the interest in the home that the surviving spouse received from the recipient by distribution or survival; or

(b) $100,000 minus the total fair market value of all of the surviving spouse's assets, other than the interest in the home that the surviving spouse received from the recipient by distribution or survival. For purposes of this section, the surviving spouse's assets do not include personal property that is exempt from execution under Title 25, chapter 13, part 6.

(3) The department may by rule require a surviving spouse to file an application for the exemption and to provide information, documentation, and

verification regarding the applicant's assets and the fair market value of assets. The department shall provide the applicant notice of its determination on the application and of the opportunity for a hearing pursuant to Title 2, chapter 4, part 6.

(4) Upon determination by the department that the applicant is entitled to an exemption, the department shall provide to the applicant an appropriate full or partial release in the amount of the exemption.

History: En. Sec. 19, Ch. 492, L. 1995.

53-6-183. Issuance of writ of execution by clerk of court. (1) If the requirements of subsection (2) are met, the clerk of court shall issue a writ of execution specifying the property to be levied upon, the amount due as of the date of filing of the application, and a statement that additional amounts may be due up to and through the date of the sale.

(2) The clerk shall issue the writ if:

(a) (i) an action has not been filed under 53-6-177 within 60 days of mailing, service, or first publication of notice, as provided in 53-6-176;

(ii) the department has filed an affidavit meeting the requirements of 53-6-176(4); and

(iii) the department has filed a sworn application containing the statements required by 53-6-175; or

(b) the court has ordered the issuance of the writ in an action under 53-6-177.

History: En. Sec. 20, Ch. 492, L. 1995.

53-6-184. Effect of sale — title acquired. The purchaser of property pursuant to a writ of execution issued under 53-6-171 through 53-6-188 acquires the right, title, interest, and claim that the recipient had at the time the lien was imposed, subject only to any right, title, interest, or claim arising from an instrument recorded prior to the department's lien under 53-6-171 and to any unpaid property taxes. The sale is absolute and is not subject to any period of redemption allowed by Title 25, chapter 13, part 8, or other law.

History: En. Sec. 21, Ch. 492, L. 1995.

Cross-References

Tax due as judgment or lien, 15-16-401.

53-6-185. Disposition of sale proceeds — application of recovered medical assistance. (1) The proceeds of a sale of property sold pursuant to a writ of execution issued under 53-6-183 must be distributed in the following order:

(a) as satisfaction of any unpaid property taxes and prior recorded interests as described in 53-6-174(2);

(b) as payment of any claims under 53-6-186(3) and (4);

(c) to the department for application to any costs incurred under 53-6-186(1) and (2) or incurred in collection;

(d) to the department for recoverable medical assistance.

(2) The department shall apply any funds received under subsection (1)(d) proportionately to the federal and state shares of recoverable medical assistance.

(3) Any excess funds remaining after application of proceeds to recoverable medical assistance must be paid to the recipient, if living, or otherwise to the recipient's representative or successor in interest.

History: En. Sec. 22, Ch. 492, L. 1995.

53-6-186. Action by department or other person to preserve property subject to lien — recovery of costs. (1) The department may, in its discretion, take any action it considers necessary to prevent waste or loss or to preserve the value of property subject to a lien under 53-6-171 through 53-6-188, including but not limited to the following:

(a) the payment of any unpaid taxes on the property;

(b) the purchase or renewal of insurance coverage on the property and the payment of necessary insurance premiums;

(c) the ordering of and payment for necessary repairs and maintenance on the property; and

(d) if the property is unoccupied, the rental or lease of the property and the application of any receipts first to unpaid property taxes, insurance, and maintenance and repair and, second, any remaining amount toward repayment of recoverable medical assistance.

(2) The department's reasonable costs and expenses to prevent waste or loss or to preserve the value of the property are secured by the lien imposed under 53-6-171 and may be recovered in addition to all other amounts secured by the lien.

(3) A person who, after the institutionalization or death of the recipient and after the institutionalization of the recipient's surviving spouse, if any, paid real property taxes, homeowner's insurance premiums, or reasonable costs of necessary maintenance or repairs on behalf of the recipient or recipient's spouse, with respect to property subject to a lien under 53-6-171 through 53-6-188, has a claim against the proceeds of a sale of the property under writ of execution issued pursuant to 53-6-183 for recovery of any amounts paid for those purposes. The claim must be supported by written documentation that clearly demonstrates the amount of each payment, the purpose of each payment, and the services and items purchased with each payment. A claim for reimbursement made under this subsection is prior to the department's lien imposed under 53-6-171.

(4) The amount of a claim made under subsection (3) must be reduced by:

(a) the amount of any rents and profits from the property paid after the institutionalization or death of the recipient and the institutionalization of the recipient's surviving spouse, if any;

(b) the value of any property that the person with a claim under subsection (3) will receive by distribution or survival from a deceased recipient if the recipient did not leave a surviving spouse; and

(c) the value of any property that the person with a claim under subsection (3) will receive by distribution or survival from the recipient's deceased spouse if the spouse survived the recipient.

History: En. Sec. 23, Ch. 492, L. 1995.

53-6-187. Time for filing of application. Except as provided in 53-6-181, the department may not file an application for issuance of a writ of execution to recover upon a lien imposed under 53-6-171 through 53-6-188 more than 3 years after the latest of:

(1) a sale, transfer, or exchange of any right, title, or interest of the recipient in the property;

(2) the death of the recipient; or

(3) the death of the recipient's surviving spouse.

History: En. Sec. 24, Ch. 492, L. 1995.

53-6-188. Coordination of lien with other medical assistance recoveries. The existence of a valid lien imposed under 53-6-171 through 53-6-188 or the fact that a lien under 53-6-171 through 53-6-188 is invalid for any reason or is unenforceable under 53-6-180 does not preclude the department from recovering under 53-6-167, 53-6-168, or 53-6-169.

History: En. Sec. 25, Ch. 492, L. 1995.

53-6-189. Rulemaking authority. The department may adopt rules to implement 53-6-143, 53-6-144, 53-6-165 through 53-6-169, and 53-6-171 through 53-6-188. The rules must comply with applicable federal law in 42 U.S.C. 1396, et seq., as may be amended, and applicable implementing regulations and policies.

History: En. Sec. 26, Ch. 492, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 2

Renal Disease Treatment Program (Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered:

53-6-201. Renumbered 50-44-101.

53-6-202. Renumbered 50-44-102.

Part 3

Montana State Hospital (Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered and Repealed:

53-6-301. Renumbered 53-21-601.

53-6-302. Repealed. Sec. 1, Ch. 80, L. 1987.

53-6-303. Renumbered 53-21-602.

53-6-304. Renumbered 53-21-603.

Histories of Repealed Sections:

53-6-302. En. Sec. 18, Ch. 199, L. 1965; amd. Sec. 6, Ch. 320, L. 1967; R.C.M. 1947, 80-1702; amd. Sec. 1, Ch. 285, L. 1981; amd. Sec. 14, Ch. 361, L. 1983.

Part 4

Community-Based Long-Term Care Medicaid Services

53-6-401. Definitions. As used in this part, the following definitions apply:

(1) "Community-based medicaid services" means those long-term medical, habilitative, rehabilitative, and other services that are available to

medicaid-eligible persons in a community setting or in a person's home as a substitute for medicaid services provided in long-term care facilities and that are allowed under the state medicaid plan in order to avoid institutionalization.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Long-term care facilities" means facilities that are certified by the department to provide skilled or intermediate nursing care services, including intermediate nursing care services for persons with developmental disabilities.

(4) "Long-term care medicaid services" means community-based medicaid services and those medicaid services provided in long-term care facilities.

(5) "Long-term care preadmission screening and resident review" means an evaluation that results in a determination as to whether a person requires the services provided in long-term care facilities and whether community-based medicaid services would be an appropriate substitute for medicaid services that are available in long-term care facilities.

History: En. Sec. 1, Ch. 516, L. 1983; amd. Sec. 6, Ch. 711, L. 1989; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 162, Ch. 418, L. 1995; amd. Sec. 458, Ch. 546, L. 1995.

Cross-References

Certified health facilities, Title 50, ch. 5.

53-6-402. Community-based long-term care facilities — powers and duties of department. (1) The department may operate, for persons eligible for medicaid, a program of community-based services as an alternative to long-term care facility services in accordance with the provisions of Title XIX of the Social Security Act, as may be amended.

(2) The department may conduct long-term care preadmission screenings and resident reviews. Long-term care preadmission screenings and resident reviews are required for all medicaid-eligible persons entering long-term care facilities and community-based services and for all persons who become eligible for medicaid after entering long-term care facilities, before payment for services in such settings are authorized under medicaid. Preadmission screenings and resident review of persons not applying for medical assistance under this part must be on a voluntary basis, except as required under the Social Security Act.

(3) The department shall annually advise medical doctors and current residents of long-term care facilities of the program provided in subsection (1).

(4) The department may adopt rules necessary to implement a program of community-based medicaid services and to establish a system of long-term care preadmission screenings and resident reviews as part of that program.

History: En. Secs. 2 thru 5, Ch. 516, L. 1983; amd. Sec. 7, Ch. 711, L. 1989.

Part 5

Traumatic Brain Injury — Services

53-6-501. Traumatic brain injury defined. (1) (a) As used in 53-6-502 and this section, "traumatic brain injury" means:

(i) an injury to the brain caused by an external physical force, including but not limited to a motor vehicle accident, a fall, an assault, a sports injury, or a recreational or work-related accident; or

(ii) brain damage caused by an internal occurrence including but not limited to:

(A) disease, such as a benign or malignant tumor, meningitis, or encephalitis; or

(B) a cerebrovascular accident, such as stroke, atherosclerosis, aneurysm, or arteriovenous malformation; or

(C) anoxia, including but not limited to anoxia caused by near drowning, drug overdose, kidney or heart failure, chemical exposure, or electrical shock.

(b) The term "traumatic brain injury" does not include injuries of a degenerative or congenital nature.

(2) Traumatic brain injury as defined in this section may produce a diminished or altered state of consciousness that results in a temporary or permanent impairment of cognitive or mental abilities, physical functioning, or behavioral or emotional functioning.

History: En. Sec. 1, Ch. 591, L. 1993.

53-6-502. Traumatic brain injury trust fund established — source of funds — uses. (1) There is an account in the state special revenue fund to be used to establish a traumatic brain injury trust fund.

(2) The trust fund consists of donations or grants received for the purpose of providing services for persons suffering from traumatic brain injury.

(3) The money in this account must be used solely for planning, coordinating, and providing services to persons suffering from traumatic brain injury.

History: En. Sec. 2, Ch. 591, L. 1993.

Part 6

Long-Term Care Reform

53-6-601. Short title. This part may be cited as the "Montana Long-Term Care Reform Act".

History: En. Sec. 1, Ch. 384, L. 1995.

53-6-602. Purpose — policy. (1) The legislature finds that in keeping with the traditional concept of the inherent dignity of the individual in a democratic society, the elderly or persons with disabilities should be able to live as independently as possible.

(2) The legislature further finds that:

(a) the ability to continue to live in a person's own residence or in the least restrictive setting best serves the health and dignity of the elderly or persons with disabilities;

(b) state programs of assistance for the elderly or persons with disabilities should be coordinated in a manner that best serves the interests of the recipients;

(c) state programs of assistance for the elderly or persons with disabilities should encourage the development of services that support the maintenance of lives as independently as possible;

(d) state programs of assistance for the elderly or persons with disabilities should encourage the development of affordable services for persons seeking services, whether financed through private means or public means;

(e) the elderly or persons with disabilities should be able to obtain insurance and other means of private financing for services that are affordable and readily available; and

(f) state agencies are required to carry out their various responsibilities for the provision of assistance, the protection of the elderly and persons with disabilities, and the licensing of facilities and professions in accordance with this part.

(3) The legislature declares that the policy of this state is to:

(a) respect the dignity of persons in the provision of state-sponsored and state-funded services for the elderly and persons with disabilities by seeking to maintain the maximum level of independence possible for those persons receiving services;

(b) foster the development of community services that allow a person to choose to remain in a person's own residence or in the least restrictive setting;

(c) foster coordination of services for the elderly or persons with disabilities among the various public and private programs; and

(d) foster the development of private means of financing services for the elderly or persons with disabilities.

History: En. Sec. 2, Ch. 384, L. 1995.

53-6-603. Long-term care service development — coordination — delivery. (1) The department of public health and human services shall cooperate in the development, implementation, and coordination of state programs of assistance for the elderly or persons with disabilities.

(2) The planning and delivery systems that provide state programs of assistance for the elderly and persons with disabilities must be jointly coordinated to foster:

(a) efficient and cost-effective financing, service delivery, intake, eligibility, assessment, and other measures, as appropriate; and

(b) general development of service systems that may serve persons with either private means or public means of financing services at a reasonable cost.

(3) State programs of assistance for the elderly or for persons with disabilities should be made available in the most appropriate, most cost-effective, and least restrictive residential setting integrated into a community.

(4) State programs of assistance that provide services or oversight in order to maintain or to protect a person's health and social life should recognize the person's dignity and independence.

History: En. Sec. 3, Ch. 384, L. 1995.

Part 7
Medicaid Managed Care

53-6-701. Policy of medicaid managed care — system for integrated health care services. It is the public policy of the state of Montana to adopt, to the extent practicable, a health care program that encourages the integration of health care services and that manages the health care of program enrollees to improve their health while preserving reasonable choice within a competitive and cost-efficient environment. In furtherance of this public policy, the department shall develop and implement an integrated health care program consistent with the provisions of this part. The provisions of this part apply only to the program created under this part. The department shall by rule identify persons eligible for enrollment in the program. The department shall inform enrollees of their choice, if any, among health care delivery systems. Persons enrolled in the program may also be offered cost-effective indemnity insurance plans, subject to availability.

History: **En. Sec. 1, Ch. 502, L. 1995.**

53-6-702. Definitions. As used in this part, the following definitions apply:

(1) "Commissioner" means the commissioner of insurance provided for in 2-15-1903.

(2) "Department" means the department of public health and human services.

(3) "Health maintenance organization" means a health maintenance organization as defined in 50-5-101.

(4) "Managed care community network" or "network" means an entity, other than a health maintenance organization, that is owned, operated, or governed by a person and that provides or arranges managed health care services under contract with the department to enrollees of the program.

(5) "Managed health care entity" or "entity" means a health maintenance organization or a managed care community network.

(6) "Person" means:

(a) an individual;

(b) a group of individuals;

(c) an insurer, as defined in 33-1-201;

(d) a health service corporation, as defined in 33-30-101;

(e) a corporation, partnership, facility, association, or trust; or

(f) an institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to a physician, hospital, hospital-related facility, or long-term care facility.

(7) "Program" means the integrated health care program created by this part.

History: **En. Sec. 2, Ch. 502, L. 1995.**

53-6-703. Managed care community network. (1) A managed care community network shall comply with:

(a) the licensure and financial solvency requirements of Title 33, chapter 31, but the commissioner may by rule reduce or eliminate a requirement of Title 33, chapter 31, if the requirement is demonstrated to be unnecessary for the operation of the managed care community network; and

(b) the federal requirements for prepaid health plans as provided in 42 CFR, part 434.

(2) A managed care community network may contract with the department to provide any combination of medicaid-covered health care services that is acceptable to the department.

(3) A managed care community network shall demonstrate its ability to bear the financial risk of servicing enrollees under the program. The commissioner shall by rule adopt criteria for assessing the financial soundness of a network. The rules must consider risk-bearing and management

techniques, as determined appropriate by the commissioner. The rules must also consider whether a network has sufficiently demonstrated its financial solvency and net worth. The commissioner's criteria must be based on sound actuarial, financial, and accounting principles. The commissioner is responsible for monitoring compliance with the rules.

(4) A managed care community network may not begin operation before the effective date of rules adopted by the commissioner under this part, the approval of any necessary federal waivers, and the completion of the review of an application submitted to the commissioner. The commissioner may charge the applicant an application review fee for the commissioner's actual cost of review of the application. The fees must be adopted by rule by the commissioner. Fees collected by the commissioner must be deposited in an account in the special revenue fund and are statutorily appropriated, as provided in 17-7-502, to the commissioner to defray the cost of application review.

(5) A health care delivery system that contracts with the department under the program may not be required to provide or arrange for any health care or medical service, procedure, or product that violates religious or moral teachings and beliefs if that health care delivery system is owned, controlled, or sponsored by or affiliated with a religious institution or religious organization but must comply with the notice requirements of 53-6-705(4)(c).

(6) The commissioner shall adopt rules to protect managed care community networks against financial insolvency. Managed care community networks are subject to health maintenance protections against financial insolvency contained in 33-31-216 in the event that a managed care community network is declared insolvent or bankrupt.

History: En. Sec. 3, Ch. 502, L. 1995; amd. Sec. 9, Ch. 577, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 577 in (1)(a) at beginning after "the" inserted "licensure and financial solvency"; and in (3) deleted former third sentence that read: "The rules must consider the extent to which a network is composed of providers who directly render health care and are located within the community in which they seek to contract rather than solely arrange or finance the delivery of health care." Amendment effective May 6, 1999.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-6-704. Different benefit packages. (1) The department may by rule provide for different benefit packages for different categories of persons enrolled in the program. Alcohol and substance abuse services, services for mental disorders, services related to children with chronic or acute conditions requiring longer-term treatment and followup, and rehabilitation care provided by a freestanding rehabilitation hospital or a rehabilitation unit may be excluded from a benefit package and those services may be made available through a separate delivery system. If a service is excluded from the program but made available in a separate delivery system by a managed care entity, that managed care entity is subject to this part. An exclusion does not prohibit the department from developing and implementing demonstration projects for categories of persons or services. Benefit packages for persons eligible for medical assistance under Title 53, chapter 6, parts 1 and 4, may be based on the requirements of those parts and must be consistent with the Title XIX of the Social Security Act. This part applies only to services purchased by the department.

(2) The program established by this part may be implemented by the department in various contracting areas at various times. The health care delivery systems and providers available under the program may vary throughout the state. Except as otherwise provided in a contract for mental health services, a licensed managed health care entity must be permitted to contract in any geographic area for which it has a sufficient provider network and that otherwise meets the requirements of the state contract.

History: En. Sec. 4, Ch. 502, L. 1995; amd. Sec. 10, Ch. 577, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 577 in (1) near end of second sentence after "package" substituted "and" for "if" and after "services" substituted "may be" for "are" and inserted third sentence providing that a managed care entity is subject to part if service is excluded from the program but made available in a separate delivery system by a managed care entity; and in (2) at beginning of third sentence inserted exception clause. Amendment effective May 6, 1999.

53-6-705. Requirements for managed health care entities. (1) A managed health care entity that contracts with the department for the provision of services under the program shall comply with the requirements of this section for purposes of the program.

(2) The entity shall provide for reimbursement for health care providers for emergency care, as defined by the department by rule, that must be provided to its enrollees, including emergency room screening services and urgent care that it authorizes for its enrollees, regardless of the provider's affiliation with the managed health care entity. Health care providers must be reimbursed for emergency care in an amount not less than the department's rates for those medical services rendered by health care providers who are not under contract with the entity to enrollees of the entity.

(3) The entity shall provide that any health care provider affiliated with a managed health care entity may also provide services on a fee-for-service basis to department clients who are not enrolled in a managed health care entity.

(4) The entity shall provide client education services as determined and approved by the department, including but not limited to the following services:

(a) education regarding appropriate use of health care services in a managed care system;

(b) written disclosure of treatment policies and any restrictions or limitations on health services, including but not limited to physician services, clinical laboratory tests, hospital and surgical procedures, prescription drugs and biologicals, and radiological examinations; and

(c) written notice that the enrollee may receive from another provider those medicaid-covered services that are not provided by the managed health care entity but that are the financial responsibility of the entity.

(5) The entity shall provide that enrollees within its system will be informed of the full panel of health care providers. Contracts for the provision of services beyond 125 miles from the borders of Montana may not be entered into if services of comparable cost and quality are available within the state of Montana.

(6) The entity may not discriminate in its enrollment or disenrollment practices among recipients of medical services or program enrollees based on health status.

(7) For purposes of participation in the medicaid program, the entity shall comply with quality assurance and utilization review requirements established by the department by rule.

(8) The entity shall require that each provider meets the standards for accessibility and quality of care established by law. The department shall prepare an annual report regarding the effectiveness of the standards on ensuring access and quality of care to enrollees.

(9) The entity shall maintain, retain, and make available to the department records, data, and information, in a uniform manner determined by the department, that is sufficient for the department to monitor utilization, accessibility, and quality of care and that is consistent with accepted practices in the health care industry.

(10) Except for health care providers who are prepaid, the entity shall pay all approved claims for covered services that are correctly completed and submitted to the entity within 30 days after receipt of the claim or receipt of the appropriate capitation payment or payments by the entity from the state for the month in which the services included on the claim were rendered, whichever is later. If payment is not made or mailed to the provider by the entity by the due date under this subsection, an interest penalty of 1% of any amount unpaid must be added for each month or fraction of a month after the due date until final payment is made. This part does not prohibit managed health care entities and health care providers from mutually agreeing to terms that require more timely payment.

(11) The entity shall seek cooperation with community-based programs provided by local health departments, such as the women, infants, and children food supplement program, childhood immunization programs, health education programs, case management programs, and health screening programs.

(12) The entity shall seek cooperation with community-based organizations, as defined by rule of the department, that may continue to operate under a contract with the department or a managed health care entity under this part to provide case management services to medicaid clients.

(13) A managed health care entity that provides written notice pursuant to subsection (4)(c) to an enrollee of medicaid-covered services available from another provider is responsible for payment for those services by another provider.

History: En. Sec. 5, Ch. 502, L. 1995.

53-6-706. Requirements relating to enrollees. (1) All individuals enrolled in the program must be provided with a full written explanation of all fee-for-service and managed health care plan options as provided by rule. The department shall provide to enrollees, upon enrollment in the program and at least annually, notice of the process for requesting an appeal under the department's administrative appeal procedures. The department shall maintain a toll-free telephone number for program enrollees' use in reporting problems with managed health care entities.

(2) If an individual becomes eligible for participation in the program while the individual is hospitalized, the department may, but is not required to, enroll the individual in the program prior to the individual's discharge from the hospital. This subsection does not apply to a newborn infant whose mother is enrolled in the program.

(3) The department shall, by rule, establish rates for managed health care entities that:

(a) are in accordance with federal requirements and with the department's current payment system;

(b) take into account any difference of cost to provide health care to different populations based on age and eligibility category. The rates for managed health care entities must be determined on a capitated basis.

(c) are based on treatment settings reasonably available to enrollees.

History: En. Sec. 6, Ch. 502, L. 1995; amd. Sec. 11, Ch. 577, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 577 in (2) near middle of first sentence after "department" substituted "may, but is not required to" for "may not" and after "program" substituted "prior to" for "until after"; in (3)(a) at beginning after "are" deleted "certified to be actuarially sound" and after "accordance" inserted "with federal requirements and"; and made minor changes in style. Amendment effective May 6, 1999.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-6-707. Payment reductions and adjustments — freedom to contract. (1) The department shall by rule establish a method to reduce its payments to managed health care entities to take the following into consideration:

(a) any adjustment payments paid to health care facilities under subsection (2)(b) to the extent that those payments or any part of those payments have been taken into account in establishing capitated rates under 53-6-705; and

(b) the implementation of methodologies to limit financial liability for managed health care entities under 53-6-705.

(2) For key services provided by a hospital that contracts with an entity, adjustment payments that are not included in capitated rates must be paid directly to the hospital by the department. Adjustment payments may include but need not be limited to:

(a) adjustment payments to disproportionate share hospitals as defined by department rule;

(b) perinatal center payments; and

(c) payments for capital, direct medical education, indirect medical education, and certified registered nurse anesthetists.

(3) For any hospital eligible for the adjustment payments described in this section, the department shall maintain, through the period ending June 30, 1996, reimbursement levels in accordance with statutes and rules in effect at the time the payments are made.

(4) This part does not limit or otherwise impair the authority of the department to enter into a contract, negotiated pursuant to this part, with a managed health care entity, including a health maintenance organization, that provides for termination or nonrenewal of the contract without cause upon notice as provided in the contract and without a hearing. If available funds are

not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program and managed care.

History: **En. Sec. 7, Ch. 502, L. 1995.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-6-708. Waiver. The department may seek and obtain any necessary authorization provided under federal law to implement the program, including the waiver of any federal statutes or regulations. The department may not expand eligibility requirements unless authorized by the legislature. The department may seek a waiver of the federal requirement that the combined membership of medicare and medicaid enrollees in a managed health care entity may not exceed 75% of the managed health care entity's total enrollment. The department may not seek a waiver of the inpatient hospital reimbursement methodology in 42 U.S.C. 1396a(a)(13) even if the federal agency responsible for administering Title XIX determines that 42 U.S.C. 1396a(a)(13) applies to managed health care systems.

History: **En. Sec. 8, Ch. 502, L. 1995; amd. Sec. 239, Ch. 42, L. 1997.**

53-6-709. Legislative auditor — oversight. (1) In order to prevent, detect, and eliminate fraud, waste, abuse, mismanagement, and misconduct and to determine that the program is administered fairly and effectively, the legislative auditor shall oversee the managed care covered by this part.

(2) A medical provider may not be compelled to provide individual medical records of patients unless the records are provided in accordance with the provisions of the Government Health Care Information Act. State and local governmental agencies shall provide the requested information, assistance, or cooperation.

(3) All activities conducted by the legislative auditor must be conducted in a manner that ensures the preservation of evidence for use in criminal prosecutions. The legislative auditor may present for prosecution the findings of any activity to the office of the attorney general or to United States attorneys in Montana.

(4) The legislative auditor shall report all convictions, terminations, and suspensions taken against vendors, contractors, and health care providers to the department and to any agency responsible for licensing or regulating those persons or entities.

(5) The legislative auditor shall make periodic reports, findings, and recommendations regarding its oversight activities authorized by this section.

(6) This part does not limit investigations by the department that may otherwise be required by law or that may be necessary in the department's capacity as the central administrative authority responsible for administration of public aid programs in this state.

History: **En. Sec. 9, Ch. 502, L. 1995; amd. Sec. 12, Ch. 577, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 577 in (1) near end after "oversee" deleted "all aspects of". Amendment effective May 6, 1999.

Cross-References

The Legislative Audit Act, Title 5, ch. 13.

Government Health Care Information Act, Title 50, ch. 16, part 6.

Part 8
Long-Term Care Insurance Partnerships

Part Compiler's Comments

Contingent Effective Date: Section 8, Ch. 195, L. 1997, provided: "(1) [Sections 4, 5, and 7 and this section] [53-6-804, 53-6-805, and the codification instruction] are effective on the effective date of the repeal of 42 U.S.C. 1396p(b)(1)(A) and (b)(1)(B) or of the amendment of that section in a manner prohibiting adjustment or recovery of medical assistance paid to individuals described in that section.

(2) [Sections 1 through 3 and 6] [53-6-801 through 53-6-803 and amendments to 53-6-143] are effective 6 months after [the effective date of sections 4 and 5] [53-6-804 and 53-6-805]."

Part Cross-References

Deduction of premiums for certain long-term care insurance policies, 15-30-121.

Credit for premium payments of certain long-term care insurance policies, 15-30-128.

Use of medical care savings account for purchase of long-term care insurance, 15-61-202, 15-61-204.

Long-Term Care Insurance Act, Title 33, ch. 22, part 11.

53-6-801. *(Effective six months after occurrence of contingency)* **Purpose.** The purpose of this part and the long-term care insurance partnerships authorized by this part is to encourage individuals to purchase long-term care insurance policies or certificates that will provide for their potential long-term care needs, thereby reducing the amount of money spent by the state of Montana for long-term care under the Montana medicaid program. The purpose of this part is also to provide an incentive for the purchase of the policies or certificates by providing individuals some protection from the requirement that they spend down their resources in order to qualify for medical assistance benefits in the form of payment for long-term care.

History: **En. Sec. 2, Ch. 195, L. 1997.**

53-6-802. *(Effective six months after occurrence of contingency)* **Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Certificate" means a certificate as defined in 33-22-1107.

(2) "Commissioner" means the commissioner of insurance provided for in 2-15-1903.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Dollar-for-dollar model" means a program in which the amount of resources that is disregarded in determining medical assistance eligibility for an individual is increased by $1 for each dollar paid by an insurer to an insured under the insured's long-term care insurance policy or certificate.

(5) "Long-term care insurance" means an insurance policy or certificate that provides coverage for medically necessary services in a long-term care facility, as defined in 50-5-101, or in the insured's home.

(6) "Long-term care insurance partnership" or "partnership" means a program of collaboration between the commissioner, the department, insurers, and their insureds to create an incentive, through the issuance of insurance policies or certificates certified by the commissioner and the department, for individuals to purchase long-term care insurance.

(7) "Policy" means a policy as defined in 33-22-1107.

History: **En. Sec. 1, Ch. 195, L. 1997.**

53-6-803. *(Effective six months after occurrence of contingency)* **Long-term care insurance partnerships authorized.** (1) The commissioner and the department may in their discretion create long-term care insurance partnerships if federal law permits those partnerships. If created, the partnerships must be consistent with the requirements of Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq.

(2) The commissioner and the department may in their discretion collaborate with private insurers to create long-term care insurance partnerships that will allow individuals who have resources in excess of the resource limit for receipt of medical assistance under the Montana medicaid program to receive medical assistance benefits if those individuals are eligible for or require the level of care provided by a long-term care facility and meet the other program requirements to qualify for those benefits.

(3) Under partnerships created pursuant to this section, individuals may qualify for special treatment of their resources if they purchase a long-term care insurance policy or certificate certified by the commissioner and the department as provided in 53-6-804 prior to becoming eligible for medical assistance benefits.

(4) The long-term care insurance partnerships may in the department's discretion be based on a dollar-for-dollar model or any other model that is cost-neutral.

History: En. Sec. 3, Ch. 195, L. 1997.

53-6-804. *(Effective on occurrence of contingency)* **Rulemaking and certification of policies by commissioner and department.** (1) The commissioner and the department may by rule adopt requirements for certification of long-term care insurance policies and certificates. These requirements may include but are not limited to:

(a) minimum levels and durations of benefits;
(b) mandatory inflation protection;
(c) mandatory home and community care coverage;
(d) case management; and
(e) procedures for the insured to appeal a denial of benefits.

(2) The commissioner and the department shall review long-term care insurance policies and certificates to determine whether policies and certificates meet the requirements for certification pursuant to this section.

History: En. Sec. 4, Ch. 195, L. 1997.

53-6-805. *(Effective on occurrence of contingency)* **Department to make rules.** The department shall adopt rules necessary for the administration of the partnerships, including but not limited to rules concerning:

(1) the populations and age groups eligible to have resources disregarded for the purposes of qualification for medical assistance benefits under the Montana medicaid program;

(2) the level of care that an individual requires in order to have resources disregarded in determining eligibility for medical assistance benefits;

(3) the amount and type of resources of an individual that will be disregarded in determining eligibility for medical assistance benefits;

(4) requirements for the disregard of resources of an individual in determining eligibility for medical assistance benefits; and

(5) the exemption of protected resources from a lien provided in 53-6-171 through 53-6-189 for the recovery of medical assistance benefits paid by the state.

History: **En. Sec. 5, Ch. 195, L. 1997.**

Part 9

Medicaid Medical Savings Account Pilot Project

53-6-901. *(Temporary)* **Legislative findings and purpose.** The legislature finds that among the contributing causes of the increase in the cost of the medicaid program has been the lack of sufficient incentive by participants in the medicaid program to conserve government funds used to pay for medicaid medical benefits. The legislature believes that treatment of medicaid funds as the personal funds of medicaid recipients would provide that needed incentive. The purpose of this part is to create a pilot program by which the effect of that incentive may be tested by providing high-deductible health care coverage to a limited number of medicaid-eligible adults and minors and allowing those participants in a pilot project to keep a part of the state money that is not used by the participants for health care expenses below the amount at which coverage begins. In this way, the legislature will test the use of personal financial incentive to help reduce medicaid costs and educate medicaid consumers to make informed decisions about appropriate use of health care. *(Terminates October 1, 2001—sec. 1, Ch. 28, L. 1999.)*

History: **En. Sec. 1, Ch. 380, L. 1997.**

Compiler's Comments

Extension of Termination Date: Section 1, Ch. 28, L. 1999, amended sec. 13, Ch. 380, L. 1997, by extending the termination date imposed by Ch. 380 to October 1, 2001. Amendment effective October 1, 1999.

53-6-902. *(Temporary)* **Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Health care expenses" means expenses incurred for health care provided by the medicaid program.

(3) "High-deductible health care coverage" means coverage for the payment of health care expenses by a group medical expense disability policy, membership contract, subscriber contract, health services agreement, or certificate of insurance provided by a health insurer, health service corporation, or health maintenance organization having a deductible amount for each participant in an amount determined by the department.

(4) "Medicaid" means the Montana medicaid program established by 53-6-101.

(5) "Medical savings account" or "account" means an account established for the purposes of this part with a state or federally chartered bank, savings and loan association, credit union, trust company, or other corporate fiduciary determined by the department.

(6) "Participant" means an individual eligible for medicaid chosen by the department in the manner provided in 53-6-905 to participate in the pilot project.

(7) "Pilot project" or "project" means the medicaid medical savings account pilot project established by this part. *(Terminates October 1, 2001—sec. 1, Ch. 28, L. 1999.)*

History: En. Sec. 2, Ch. 380, L. 1997.

Compiler's Comments

Extension of Termination Date: Section 1, Ch. 28, L. 1999, amended sec. 13, Ch. 380, L. 1997, by extending the termination date imposed by Ch. 380 to October 1, 2001. Amendment effective October 1, 1999.

53-6-903. *(Temporary)* **Medicaid medical savings accounts — pilot project elements — project timelines — contracts.** (1) The department shall design a pilot project in accordance with 53-6-904 and this section for the use of medical savings accounts in conjunction with the Montana medicaid program. The department shall establish and administer the medical savings account and high-deductible health care coverage parts of the pilot project following approval of the waivers requested by the department pursuant to 53-6-906.

(2) The pilot project consists of the following elements:

(a) a design plan prepared by the department pursuant to a contract required by 53-6-904;

(b) a request submitted by the department pursuant to 53-6-906 to the U.S. health care financing administration for waivers, pursuant to 42 U.S.C. 1315, of requirements of Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq.;

(c) establishment, funding, and management by the department pursuant to a contract required by 53-6-907 of medical savings accounts for participants chosen pursuant to 53-6-905;

(d) high-deductible health care coverage purchased by contract by the department in accordance with 53-6-908 for each participant for each fiscal year during the time of the pilot project;

(e) evaluation of the pilot project in the manner provided by 53-6-909 and reports to the legislative audit division and to the legislative fiscal division in the manner required by 53-6-910.

(3) The pilot project begins with commencement of the design plan provided by 53-6-904. Elements of the project as provided in subsection (2) of this section may be begun and completed at times determined by the department consistent with this part. However, medical savings accounts and high-deductible health care coverage for each participant must begin no later than January 1, 1999.

(4) Requests for proposals and contracts required or authorized by this part must comply in all respects with the provisions of Title 18. The department may also consult with the department of administration, the state insurance commissioner, and recognized experts in contracts for the types of services required or authorized by this part before committing the state to those contracts.

(5) The pilot project may not include mental health services. *(Terminates October 1, 2001—sec. 1, Ch. 28, L. 1999.)*

History: En. Sec. 3, Ch. 380, L. 1997.

Compiler's Comments

Extension of Termination Date: Section 1, Ch. 28, L. 1999, amended sec. 13, Ch. 380, L. 1997, by extending the termination date imposed by Ch. 380 to October 1, 2001. Amendment effective October 1, 1999.

53-6-904. *(Temporary)* **Pilot project design plan required.** The department shall by contract create a design plan for the pilot project. The design plan must consist of the following project elements and the projected time periods and goals for each element:

(1) a report on participant profiles for use by insurers or others who may provide the high-deductible health care coverage and a cost analysis for provision of that coverage;

(2) a calculation for each fiscal year of the project of the number of participants to be chosen pursuant to 53-6-905, the amounts deposited for each participant into the participant's medical savings account, the projected cost per participant, and the annual projected savings resulting from the project prior to each project fiscal year;

(3) a request for proposals to develop the request for waivers to be submitted to the U.S. health care financing administration pursuant to 53-6-906;

(4) development of requests for proposals by which the department would contract for the administration of participant medical savings accounts pursuant to 53-6-907, including a nondiscriminatory methodology by which the department will determine the amount remaining within an account to be paid to a participant pursuant to 53-6-907(3), and the provision of high-deductible health care coverage pursuant to 53-6-908;

(5) development of a methodology for measuring project outcomes in subject areas, including but not limited to cost, access, and health status of the project participants, as provided in 53-6-909;

(6) the method and subjects of an independent assessment of the pilot project in areas, including but not limited to cost-effectiveness, access, and quality, as provided in 53-6-909; and

(7) the method and subjects of the reports required by 53-6-910. *(Terminates October 1, 2001—sec. 1, Ch. 28, L. 1999.)*

History: En. Sec. 4, Ch. 380, L. 1997.

Compiler's Comments

Extension of Termination Date: Section 1, Ch. 28, L. 1999, amended sec. 13, Ch. 380, L. 1997, by extending the termination date imposed by Ch. 380 to October 1, 2001. Amendment effective October 1, 1999.

53-6-905. *(Temporary)* **Choice of pilot project participants.** The department shall, in a manner chosen by the department, offer participation in the pilot project to adult and minor individuals chosen in a manner to accurately represent those persons in Montana receiving benefits from the medicaid program. Participation in the pilot project by those individuals chosen by the department is voluntary. In offering participation in the project, the department shall explain the aspects and objectives of the project as they will affect participants and explain the responsibilities of participants. The department shall limit the number of participants to not less than 1,000 and not more than 5,000. *(Terminates October 1, 2001—sec. 1, Ch. 28, L. 1999.)*

History: En. Sec. 5, Ch. 380, L. 1997.

Compiler's Comments

Extension of Termination Date: Section 1, Ch. 28, L. 1999, amended sec. 13, Ch. 380, L. 1997, by extending the termination date imposed by Ch. 380 to October 1, 2001. Amendment effective October 1, 1999.

53-6-906. *(Temporary)* **Request by department for waivers.** The department shall, by request for proposals, develop and submit to the U.S. health care financing administration a request for waivers from federal statutes and regulations necessary to obtain federal financial participation in the pilot project to the same extent that the federal government participates in the medicaid program. Contracts entered into by the department for this purpose must provide for the continuing support of the contractor during waiver negotiations. *(Terminates October 1, 2001—sec. 1, Ch. 28, L. 1999.)*

History: En. Sec. 6, Ch. 380, L. 1997.

Compiler's Comments

Extension of Termination Date: Section 1, Ch. 28, L. 1999, amended sec. 13, Ch. 380, L. 1997, by extending the termination date imposed by Ch. 380 to October 1, 2001. Amendment effective October 1, 1999.

53-6-907. *(Temporary)* **Medical savings accounts — administration — payments — terms and conditions.** (1) Upon approval of the waivers requested pursuant to 53-6-906, the department shall, by request for proposals, provide for the administration of a medical savings account for each participant. The term of a contract entered into pursuant to the requests may be for a fiscal year or for another period determined by the department that is consistent with appropriations for and the objectives of the pilot project.

(2) (a) Upon receipt of an appropriation for the purposes of this section, the department shall pay to the administrator of each participant's medical savings account an amount of money determined by the department and based upon the average statewide cost for medical assistance for each individual in the medicaid program.

(b) A contract for the administration of the pilot project must include payment of the amount into the account of each participant at the beginning of each month or at a payment interval during the time of the project as determined by the department. Administration must also include payment of participants' medical claims from the accounts, recordkeeping necessary for proper administration of the payments and accounts, and payment of amounts remaining in the account to the participant as provided in subsection (3).

(c) The department may require as part of the contract for the administration of the accounts that the contractor provide educational information to participants and accounting, auditing, and recordkeeping services necessary for project evaluation and reports as required by 53-6-909 and 53-6-910.

(3) The terms of the contract for the administration of the pilot project must include payment within 90 days after the end of the fiscal year to each project participant, and each participant may retain an amount of money determined by the department and remaining in the account at the end of a fiscal year. The terms of the use of an account by a participant may also include requirements necessary for the proper administration and use of the account. *(Terminates October 1, 2001—sec. 1, Ch. 28, L. 1999.)*

History: En. Sec. 7, Ch. 380, L. 1997.

Compiler's Comments

Extension of Termination Date: Section 1, Ch. 28, L. 1999, amended sec. 13, Ch. 380, L. 1997, by extending the termination date imposed by Ch. 380 to October 1, 2001. Amendment effective October 1, 1999.

53-6-908. *(Temporary)* **High-deductible health care coverage required.** Upon approval of the waivers requested pursuant to 53-6-906, the department shall, by request for proposals before the beginning of each fiscal year during the time of the pilot project, obtain high-deductible health care coverage for each participant. In making the request for proposals, the department shall provide to potential contractors the information concerning the project and participants reasonably determined by the department to be needed by potential contractors to adequately assess the degree of financial risk to be assumed by the successful contractor. The contract with the department must require the contractor to provide high-deductible health care coverage for each participant beginning with each fiscal year and ending at the end of each fiscal year during the time of the project. *(Terminates October 1, 2001—sec. 1, Ch. 28, L. 1999.)*

History: En. Sec. 8, Ch. 380, L. 1997.

Compiler's Comments

Extension of Termination Date: Section 1, Ch. 28, L. 1999, amended sec. 13, Ch. 380, L. 1997, by extending the termination date imposed by Ch. 380 to October 1, 2001. Amendment effective October 1, 1999.

53-6-909. *(Temporary)* **Project evaluation — outcomes measurement — independent assessment.** (1) The department shall, by request for proposals, provide for evaluation of the project outcomes at the completion of the project and may provide for evaluation at other times as the department may determine. The evaluation must include an evaluation of the cost-effectiveness of the project, the degree of access to health care available to participants, and the health status of participants. A contract for project evaluation may be combined by the department with another contract made by the department pursuant to this part.

(2) The department shall, by request for proposals, provide for an independent assessment of the project by a corporation, firm, partnership, or other business entity knowledgeable in the measurement of cost-effectiveness, access, quality of care, and health status of individuals receiving health care. A contract for the assessment may not be combined with another contract made by the department pursuant to this part. A contract required by this subsection must also require the contractor to provide information developed by the assessment to the U.S. health care financing agency or another agency of the federal government. *(Terminates October 1, 2001—sec. 1, Ch. 28, L. 1999.)*

History: En. Sec. 9, Ch. 380, L. 1997.

Compiler's Comments

Extension of Termination Date: Section 1, Ch. 28, L. 1999, amended sec. 13, Ch. 380, L. 1997, by extending the termination date imposed by Ch. 380 to October 1, 2001. Amendment effective October 1, 1999.

53-6-910. *(Temporary)* **Reports required.** The department shall, at the conclusion of the project, provide a report to the legislative audit division and the legislative fiscal division containing those matters determined in the evaluation and independent assessment required by 53-6-909. *(Terminates October 1, 2001—sec. 1, Ch. 280, L. 1999.)*

History: En. Sec. 10, Ch. 380, L. 1997.

Compiler's Comments

Extension of Termination Date: Section 1, Ch. 28, L. 1999, amended sec. 13, Ch. 380, L. 1997, by extending the termination date imposed by Ch. 380 to October 1, 2001. Amendment effective October 1, 1999.

CHAPTER 7

VOCATIONAL REHABILITATION

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Chapter Cross-References

Veterans' public employment preference, Title 39, ch. 29.

Persons with disabilities public employment preference, Title 39, ch. 30.

Part 1

General Vocational Rehabilitation

53-7-101. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Independent living" means control over one's life based upon a choice between acceptable options in a manner that minimizes reliance upon others for making decisions and conducting activities of daily living.

(3) "Maintenance" means money payments made in accordance with 53-7-108.

(4) "Occupational license" means a license, permit, or other written authority required by any governmental unit to engage in an occupation.

(5) "Person with a disability" means the same as "individual with a disability" as defined in the federal Rehabilitation Act of 1973, 29 U.S.C. 706(8)(A), as may be amended. The term includes any individual who lacks occupational or vocational achievement because of the presence of a physical or mental disability.

(6) "Physical restoration" means any medical, surgical, or therapeutic treatment necessary to correct or substantially reduce the impediment to employment of a person within a reasonable length of time, including but not limited to medical, psychiatric, dental, and surgical treatment, nursing services, hospital care, convalescent care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitory medical conditions unless necessary to maintain a person's health in order to complete a rehabilitation plan.

(7) "Prosthetic appliance" means an artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.

(8) "Rehabilitation engineering" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by persons with disabilities. The barriers may exist in the areas of education, rehabilitation, employment, transportation, independent living, and recreation.

(9) "Rehabilitation plan" means a plan, developed with the participation of the recipient, for providing services to assist a person with a disability to become independent and productive or employable.

(10) "Rehabilitation training" means training provided to a person with a disability to overcome the person's impediment to employment. The term includes but is not limited to manual, preconditioning, prevocational, vocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities.

(11) "Vocational rehabilitation" means the provision of vocational rehabilitation services to a person with a disability to enable the person to the extent possible to become independent and productive or employable.

(12) "Vocational rehabilitation services" means the following services: medical diagnosis, vocational guidance, vocational counseling, vocational placement, rehabilitation training, rehabilitation engineering, physical restoration, transportation, occupational licenses, customary occupational tools and equipment, maintenance, training books and materials, group facilities, family services, followup services, and any other goods and services provided for by rule and that the department determines to be necessary to rehabilitate the person.

History: En. Sec. 1, Ch. 74, L. 1947; amd. Sec. 1, Ch. 218, L. 1959; amd. Sec. 1, Ch. 53, L. 1961; amd. Sec. 1, Ch. 192, L. 1971; Sec. 41-801, R.C.M. 1947; amd. and redes. 71-1801 by Sec. 10, Ch. 121, L. 1974; R.C.M. 1947, 71-2101; amd. Sec. 1, Ch. 396, L. 1989; amd. Sec. 1, Ch. 326, L. 1993; amd. Sec. 459, Ch. 546, L. 1995; amd. Sec. 240, Ch. 42, L. 1997; amd. Sec. 53, Ch. 472, L. 1997.

53-7-102. Powers and duties of department. The department:

(1) shall adopt rules necessary for the administration of this part. Rules adopted may include but are not limited to the provision of services, individual

service plans, eligibility for services, application, service goals and design, quality of services, provider relationships, program standards, program staffing, staff training, provider accounting procedures, confidential information, recipient grievance procedures, hearings, and definitions necessary to carry out this part.

(2) may take any other action that it determines necessary or appropriate to carry out the purposes of this part;

(3) may cooperate with other departments and agencies and institutions, both public and private, in providing for vocational rehabilitation of persons with disabilities, in studying the problems involved in vocational rehabilitation, and in establishing, developing, and providing programs, facilities, and services;

(4) may conduct research and compile statistics relating to the vocational rehabilitation of persons with disabilities; and

(5) may accept and use gifts to carry out this part.

History: En. Sec. 3, Ch. 74, L. 1947; amd. Sec. 3, Ch. 53, L. 1961; amd. Sec. 12, Ch. 93, L. 1969; Sec. 41-803, R.C.M. 1947; amd. and redes. 71-1802 by Sec. 11, Ch. 121, L. 1974; R.C.M. 1947, 71-2102; amd. Sec. 2, Ch. 396, L. 1989; amd. Sec. 54, Ch. 472, L. 1997.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-7-103. Department to cooperate with federal government. The department shall cooperate, pursuant to agreements with the federal government, in carrying out the purposes of the federal Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as may be amended, and may adopt methods of administration as required by the federal government for state participation in programs funded under the federal act.

History: En. Sec. 5, Ch. 74, L. 1947; amd. Sec. 2, Ch. 218, L. 1959; amd. Sec. 5, Ch. 53, L. 1961; Sec. 41-805, R.C.M. 1947; amd. and redes. 71-1803 by Sec. 12, Ch. 121, L. 1974; R.C.M. 1947, 71-2103; amd. Sec. 3, Ch. 396, L. 1989.

53-7-104. Repealed. Sec. 16, Ch. 396, L. 1989.

History: En. Sec. 6, Ch. 74, L. 1947; amd. Sec. 3, Ch. 218, L. 1959; Sec. 41-806, R.C.M. 1947; amd. and redes. 71-1804 by Sec. 13, Ch. 121, L. 1974; R.C.M. 1947, 71-2104.

53-7-105. Eligibility. A person with a disability is eligible for vocational rehabilitation services if the department, after full investigation, determines that the person may become employable or achieve accepted vocational objectives through the provision of vocational rehabilitation services that are made available as provided for in 53-7-108.

History: En. Sec. 8, Ch. 74, L. 1947; amd. Sec. 3, Ch. 192, L. 1971; Sec. 41-808, R.C.M. 1947; amd. and redes. 71-1805 by Sec. 14, Ch. 121, L. 1974; R.C.M. 1947, 71-2105; amd. Sec. 1, Ch. 55, L. 1981; amd. Sec. 4, Ch. 396, L. 1989; amd. Sec. 55, Ch. 472, L. 1997.

53-7-106. Hearings. A person applying for or receiving vocational rehabilitation services who is aggrieved by any action or inaction of the department is entitled to a fair hearing in accordance with the rules adopted by the department.

History: En. Sec. 10, Ch. 74, L. 1947; amd. Sec. 4, Ch. 192, L. 1971; Sec. 41-810, R.C.M. 1947; amd. and redes. 71-1806 by Sec. 15, Ch. 121, L. 1974; R.C.M. 1947, 71-2106; amd. Sec. 5, Ch. 396, L. 1989.

Cross-References

Contested case defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Contested cases, Title 2, ch. 4, part 6.

53-7-107. Repealed. Sec. 1, Ch. 32, L. 1987.

History: En. Sec. 12, Ch. 74, L. 1947; Sec. 41-812, R.C.M. 1947; amd. and redes. 71-1807 by Sec. 16, Ch. 121, L. 1974; R.C.M. 1947, 71-2107.

53-7-108. Provision of services — financial responsibility for services. (1) The department, in accord with this part and the federal Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as may be amended, may provide to persons determined eligible under 53-7-105 any vocational rehabilitation services listed in 53-7-101 that are determined by the department to be appropriate and necessary for the person's vocational rehabilitation.

(2) The following vocational rehabilitation services are available without cost to an eligible person:

(a) counseling and guidance;

(b) diagnostic evaluation; and

(c) placement.

(3) In addition to the services listed in subsection (2), the department may pay the cost of other vocational rehabilitation services for an eligible person to the extent that the department determines that the person is without sufficient financial resources to pay the cost of such services.

(4) The department may in its discretion provide maintenance payments to a recipient of vocational rehabilitation services if the department determines that the recipient is without sufficient financial resources to:

(a) obtain basic necessities at a level the department determines is appropriate; and

(b) pay the cost of vocational rehabilitation services to be provided to the person.

History: En. Sec. 6, Ch. 396, L. 1989.

53-7-109. Administration of vocational rehabilitation programs — applicability. (1) Those divisions of the department that have programs for the provision of vocational rehabilitation services may share administrative personnel, operations, and policies so as to assure uniform administration necessary under the federal Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as may be amended. Within the department, the vocational rehabilitation services provided under the federal act must be administered in such a way that they are kept separate and independent from other programs, except as provided in section 15, Chapter 396, Laws of 1989.

(2) This section applies to all programs and services in Title 53, chapter 7, administered by the department with funds provided under the federal Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as may be amended.

History: En. Sec. 14, Ch. 396, L. 1989.

Part 2
Sheltered Workshops

53-7-201. Legislative findings and purpose. (1) The purpose of this part is to encourage the development and improvement of supervised work programs and support services for persons with severe disabilities.

(2) Supervised work programs and support services should be available to provide persons with severe disabilities the skills and means by which they may lead socially and vocationally productive lives so they can be integrated into society.

(3) The state may encourage the establishment of and provide funding for supervised work programs and support services for persons with severe disabilities.

History: **En. Sec. 1, Ch. 322, L. 1973; R.C.M. 1947, 41-816; amd. Sec. 1, Ch. 267, L. 1989.**

53-7-202. Definitions. (1) "Department" means the department of public health and human services.

(2) "Severe disability" means a severe physical or mental impairment that seriously limits a person's functional capacities in respect to obtaining employment.

(3) "Sheltered employment" means a recognized program of rehabilitation, remunerative employment, or other occupational rehabilitating activity of an educational or therapeutic nature provided by a nonprofit sheltered workshop provider. Sheltered employment includes job skills and social skills training and remunerative employment.

(4) "Supervised work program" means a program providing guidance in learning and achieving the requirements of job performance through work activity, sheltered employment, and supported employment.

(5) "Support services" means continuous or periodic job skills training provided to a person at a worksite to enable the person to perform work. Support services also include services away from the worksite that are necessary to allow a person with a severe disability to participate in a supervised work program, such as transportation, direction and assistance in functional skills, and counseling for family members.

(6) "Supported employment" means competitive work in an integrated work setting for a person with a severe disability who is in need of assistance in order to become employed or remain employed. Supported employment includes assessment, preplacement preparation, job development, job placement, job skills training, and support services.

(7) "Work activity" means therapeutic work-related activities provided by a nonprofit work activity center provider to persons whose physical or mental impairment is so severe as to make their productive capacity inconsequential. Therapeutic work-related activities include training in basic skills of living and any purposeful activity so long as work or production is not the main purpose.

History: **En. Sec. 2, Ch. 322, L. 1973; amd. Sec. 1, Ch. 333, L. 1974; amd. Sec. 10, Ch. 37, L. 1977; R.C.M. 1947, 41-817; amd. Sec. 2, Ch. 267, L. 1989; amd. Sec. 460, Ch. 546, L. 1995.**

53-7-203. Purchase of services. (1) The department may purchase services under this part for persons with severe disabilities, to the extent that funds are appropriated and allocated, from any sheltered employment provider, work activity center, supported employment provider, or support services provider within Montana.

(2) An organization may receive funding under this part if it meets the standards and criteria promulgated by the department.

(3) The department shall adopt standards and criteria for the services purchased under this part to assure the quality and appropriateness of such services. The department may adopt standards and criteria of a nationally recognized accreditation organization for accrediting facilities providing services under this part.

History: En. Sec. 3, Ch. 322, L. 1973; amd. Sec. 2, Ch. 333, L. 1974; R.C.M. 1947, 41-818; amd. Sec. 3, Ch. 267, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Special state purchasing conditions — sheltered workshops, Title 18, ch. 5, part 1.

One-step licensing — inspection by other Department, Title 50, ch. 8.

53-7-204. Federal and other aid. (1) The department may apply for and receive federal aid money or other funding available for the programs provided for under this part.

(2) Federal funds and other funding as may be available are appropriated to the department for use in administering the provisions of this part.

History: En. Sec. 4, Ch. 322, L. 1973; R.C.M. 1947, 41-819; amd. Sec. 4, Ch. 267, L. 1989.

53-7-205. Eligibility for services. (1) A person may receive services provided for under this part if the department determines that:

(a) the person has a severe disability;

(b) the person lacks social competence, mobility, experience, skills, training, or other characteristics of independence;

(c) the person is in need of services provided for under this part; and

(d) the needed services are available for that person.

(2) The receipt of services under this part by an eligible person shall be governed by an individual service plan developed in accordance with state and federal requirements.

History: En. Sec. 5, Ch. 267, L. 1989.

53-7-206. Rulemaking. For the purposes of providing supervised work programs and support services for persons with severe disabilities, the department may adopt rules necessary for the administration of such programs. Rules adopted may include but are not limited to rules regarding eligibility for services, certification of services, program staffing, staff training, service goals and design, quality of services, recipient placement procedures, individual service plans, recipient rights and privileges, recipient grievance procedures, fair hearings, provider relationships, provider accounting procedures, and definitions necessary to implement this part.

History: En. Sec. 6, Ch. 267, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 3
Vocational Rehabilitation of the Blind

Part Cross-References

Vending facilities for blind vendors, Title 18, ch. 5, part 4.

Assistance by employment placement officer, 20-8-116.

53-7-301. Definitions. As used in this part, the following definitions apply:

(1) (a) "Blindness" means a visual disability in which:

(i) a person's central visual acuity does not exceed 20/200 in the better eye with correcting lenses; or

(ii) a person's visual field at the widest diameter subtends an angle no greater than 20 degrees.

(b) The term includes any visual disability that, in the determination of the department, renders vision seriously defective or causes blindness.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Independent living" means control over one's life based upon a choice between acceptable options in a manner that minimizes reliance upon others for making decisions and conducting activities of daily living.

(4) "Low vision" means a visual impairment that, even with correction, remains so severe as to make performance of daily tasks difficult.

(5) "Maintenance" means money payments made in accordance with 53-7-310.

(6) "Occupational license" means a license, permit, or other written authority required by any governmental unit to engage in an occupation.

(7) "Person with a disability" means the same as "individual with a disability" as defined in the federal Rehabilitation Act of 1973, 29 U.S.C. 706(8)(A), as may be amended. The term includes any individual who lacks occupational or vocational achievement because of the presence of a physical or mental disability.

(8) (a) "Physical restoration" means any medical, surgical, or therapeutic treatment necessary to correct or substantially reduce an impediment to employment caused by blindness or low vision within a reasonable length of time, including but not limited to medical, psychiatric, dental, and surgical treatment, nursing services, hospital care, convalescent care, drugs, medical and surgical supplies, and prosthetic appliances.

(b) The term does not include curative treatment for acute or transitory medical conditions unless necessary to maintain a person's health in order to complete a rehabilitation plan.

(9) "Prosthetic appliance" means an artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.

(10) "Rehabilitation engineering" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by persons with blindness or low vision. The barriers may exist in the areas of education, rehabilitation, employment, transportation, independent living, and recreation.

(11) "Rehabilitation plan" means a plan, developed with the participation of the recipient, for providing services to assist a person with blindness or low vision to become independent and productive or employable.

(12) "Rehabilitation training" means training provided to a person with blindness or low vision to overcome the person's impediment to employment, including but not limited to manual, preconditioning, prevocational, vocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities.

(13) "Vocational rehabilitation" means the provision of vocational rehabilitation services to a person with blindness or low vision to enable the person to the extent possible to become independent and productive or employable.

(14) "Vocational rehabilitation services" means the following services: medical diagnosis, vocational guidance, vocational counseling, vocational placement, rehabilitation training, rehabilitation engineering, physical restoration, transportation, occupational licenses, customary occupational tools and equipment, maintenance, training books and materials, group facilities, family services, followup services, and any other goods and services provided for by rule and that the department determines to be necessary to rehabilitate the person.

History: (1), (2), (4) thru (10)En. Sec. 1, Ch. 167, L. 1955; amd. Sec. 33, Ch. 121, L. 1974; amd. Sec. 37, Ch. 37, L. 1977; Sec. 71-1401, R.C.M.; (3)En. 71-201.1 by Sec. 19, Ch. 121, L. 1974; Sec. 71-201.1, R.C.M. 1947; R.C.M. 1947, 71-201.1(1), 71-1401; amd. Sec. 7, Ch. 396, L. 1989; amd. Sec. 2, Ch. 326, L. 1993; amd. Sec. 461, Ch. 546, L. 1995; amd. Sec. 241, Ch. 42, L. 1997; amd. Sec. 56, Ch. 472, L. 1997.

53-7-302. Administration. The department may:

(1) cooperate with other departments and agencies and institutions, both public and private, in providing the services authorized by this part to persons with blindness or low vision; in studying the problems involved in vocational rehabilitation; and in establishing, developing, and providing programs, facilities, and services;

(2) conduct research and compile statistics relating to the provision of services to or the need of services for persons with blindness or low vision;

(3) accept and use gifts to carry out this part; and

(4) make rules and take any other action it determines necessary or appropriate to carry out this part.

History: En. Sec. 4, Ch. 167, L. 1955; amd. Sec. 34, Ch. 121, L. 1974; amd. Sec. 1, Ch. 237, L. 1974; R.C.M. 1947, 71-1404; amd. Sec. 4, Ch. 199, L. 1979; amd. Sec. 8, Ch. 396, L. 1989.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-7-303. Cooperation with federal government. The department shall cooperate, pursuant to agreements with the federal government, in carrying out the purposes of the federal Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as may be amended, and may adopt methods of administration required by the federal government for state participation in programs funded under the federal act.

History: En. Sec. 5, Ch. 167, L. 1955; R.C.M. 1947, 71-1405; amd. Sec. 9, Ch. 396, L. 1989.

53-7-304. Repealed. Sec. 16, Ch. 396, L. 1989.

History: En. Sec. 6, Ch. 167, L. 1955; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 71-1406.

53-7-305. Repealed. Sec. 16, Ch. 396, L. 1989.

History: En. Sec. 7, Ch. 167, L. 1955; amd. Sec. 35, Ch. 121, L. 1974; R.C.M. 1947, 71-1407.

53-7-306. Eligibility for services. A person with a disability because of blindness or low vision is eligible for vocational rehabilitation services if the department, after full investigation, determines that the person may become employable or achieve accepted vocational objectives through the provision of vocational rehabilitation services that are made available as provided for in 53-7-310.

History: En. Sec. 8, Ch. 167, L. 1955; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 71-1408; amd. Sec. 2, Ch. 55, L. 1981; amd. Sec. 10, Ch. 396, L. 1989; amd. Sec. 57, Ch. 472, L. 1997.

53-7-307. Repealed. Sec. 16, Ch. 396, L. 1989.

History: En. Sec. 9, Ch. 167, L. 1955; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 71-1409.

53-7-308. Repealed. Sec. 16, Ch. 396, L. 1989.

History: En. Sec. 2, Ch. 523, L. 1979.

53-7-309. Repealed. Sec. 16, Ch. 396, L. 1989.

History: En. Sec. 3, Ch. 523, L. 1979.

53-7-310. Provision of services — financial responsibility for services. (1) The department, in accord with this part and the Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as may be amended, may provide to persons determined eligible under 53-7-306 any vocational rehabilitation services listed in 53-7-301 that are determined by the department to be appropriate and necessary for the person's vocational rehabilitation.

(2) The following vocational rehabilitation services are available without cost to a person eligible for visual services:

(a) counseling and guidance;
(b) diagnostic evaluation; and
(c) placement.

(3) In addition to the services listed in subsection (2), the department may pay the cost of other vocational rehabilitation services for an eligible person to the extent that the department determines that the person is without sufficient financial resources to pay the cost of such services.

(4) The department may in its discretion provide maintenance payments to a recipient of vocational rehabilitation services if the department determines that the recipient is without sufficient financial resources to:

(a) obtain basic necessities at a level the department determines is appropriate; and

(b) pay the cost of vocational rehabilitation services to be provided to the person.

History: En. Sec. 11, Ch. 396, L. 1989.

53-7-311 through 53-7-313 reserved.

53-7-314. Hearings. A person applying for or receiving vocational rehabilitation services who is aggrieved by any action or inaction of the department is entitled to a fair hearing in accordance with rules adopted by the department.

History: En. Sec. 12, Ch. 396, L. 1989.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

53-7-315. Rulemaking authority. The department shall adopt rules necessary for the administration of this part. Rules adopted may include but are not limited to the provision of services, individual service plans, eligibility for services, application, service goals and design, quality of services, provider relationships, program standards, program staffing, staff training, provider accounting procedures, confidential information, recipient grievance procedures, hearings, and definitions necessary to carry out this part.

History: En. Sec. 13, Ch. 396, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

CHAPTER 8

ECONOMIC OPPORTUNITY (Repealed. Sec. 63, Ch. 16, L. 1991)

Chapter Compiler's Comments

Histories of Repealed Sections:

53-8-101. En. Sec. 1, Ch. 263, L. 1965; R.C.M. 1947, 71-1601.

53-8-102. En. Sec. 2, Ch. 263, L. 1965; R.C.M. 1947, 71-1602.

53-8-103. En. Sec. 3, Ch. 263, L. 1965; R.C.M. 1947, 71-1603.

53-8-104. En. Sec. 4, Ch. 263, L. 1965; R.C.M. 1947, 71-1604.

CHAPTER 9

SERVICES FOR VICTIMS OF CRIME

Part 1 — The Crime Victims Compensation Act of Montana

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Chapter Cross-References

Rights of crime victims — compensation and assistance account, 46-18-248 through 46-18-251.

Treatment of victims and witnesses, Title 46, ch. 24.

Part 1
The Crime Victims Compensation Act of Montana

Part Cross-References

Availability of remedies — liability, Title 27, ch. 1.

53-9-101. Short title. This part may be cited as "The Crime Victims Compensation Act of Montana".

History: En. 71-2601 by Sec. 1, Ch. 527, L. 1977; R.C.M. 1947, 71-2601.

53-9-102. Legislative purpose and intent. It is the intent of the legislature to provide a method of compensating those persons within the state who are innocent victims of criminal acts, including acts of international terrorism, as defined in 18 U.S.C. 2331, that are committed outside of the United States against a resident of this state, and who suffer bodily injury or death and those innocent citizens of this state who are injured or killed in a state that does not have a crime victims compensation program that covers out-of-state residents injured or killed in that state. To this end, it is the legislature's intention to provide compensation for injuries suffered as a direct result of the criminal acts of other persons and to coordinate victims' assistance programs.

History: En. 71-2602 by Sec. 2, Ch. 527, L. 1977; R.C.M. 1947, 71-2602; amd. Sec. 1, Ch. 354, L. 1991; amd. Sec. 1, Ch. 397, L. 1991; amd. Sec. 7, Ch. 186, L. 1997.

53-9-103. Definitions. As used in this part, the following definitions apply:

(1) "Claimant" means any of the following claiming compensation under this part:

(a) a victim;

(b) a dependent of a deceased victim; or

(c) an authorized person acting on behalf of any of them.

(2) "Collateral source" means a source of benefits, other than welfare benefits, or advantages for economic loss otherwise compensable under this part that the claimant has received or that is readily available to the claimant from:

(a) the offender;

(b) the government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this part;

(c) social security, medicare, and medicaid;

(d) workers' compensation;

(e) wage continuation programs of any employer;

(f) proceeds of a contract of insurance payable to the claimant for loss that was sustained because of the criminally injurious conduct;

(g) a contract, including an insurance contract, providing hospital and other health care services or benefits for disability. A contract in this state may not provide that benefits under this part are a substitute for benefits under the contract or that the contract is a secondary source of benefits and benefits under this part are a primary source.

(h) a crime victims compensation program operated by the state in which the victim was injured or killed that compensates residents of this state injured or killed in that state; or

(i) any other third party.

(3) "Criminally injurious conduct" means conduct that:

(a) occurs or is attempted in this state or an act of international terrorism, as defined in 18 U.S.C. 2331, committed outside of the United States against a resident of this state;

(b) results in bodily injury or death; and

(c) is punishable by fine, imprisonment, or death or would be so punishable except that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state; however, criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle unless the bodily injury or death occurred during the commission of an offense defined in Title 45 that requires the mental state of purposely as an element of the offense or the injury or death was inflicted by the driver of a motor vehicle who is found by the division, by a preponderance of the evidence, to have been operating the motor vehicle while under the influence, as that term is defined in 61-8-401; or

(d) is committed in a state without a crime victims compensation program that covers a resident of this state if the conduct meets the requirements in subsections (3)(b) and (3)(c).

(4) "Dependent" means a natural person who is recognized under the law of this state to be wholly or partially dependent upon the victim for care or support and includes a child of the victim conceived before the victim's death but born after the victim's death, including a child that is conceived as a result of the criminally injurious conduct.

(5) "Division" means the division of crime control of the department of justice.

(6) "Victim" means a person who suffers bodily injury or death as a result of:

(a) criminally injurious conduct;

(b) the person's good faith effort to prevent criminally injurious conduct; or

(c) the person's good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious conduct.

History: En. 71-2603 by Sec. 3, Ch. 527, L. 1977; R.C.M. 1947, 71-2603; amd. Sec. 1, Ch. 367, L. 1979; amd. Sec. 1, Ch. 496, L. 1987; amd. Sec. 2, Ch. 68, L. 1989; amd. Sec. 2, Ch. 397, L. 1991; amd. Sec. 8, Ch. 186, L. 1997.

Cross-References

Crimes, Title 45.

53-9-104. Powers and duties of division. (1) The division shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation;

(c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual formally charged with or convicted of a qualifying crime for any rendition, interview, statement, book, photograph, movie, television production, play, or article relating to such crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, if the individual is convicted of the crime, to be held for such period of time as the division may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to pay the costs and attorney fees of court-appointed counsel for the charged person. Each victim and dependent of a deceased victim is entitled to his actual and unreimbursed damages of all kinds or $5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the county as reimbursement for any public defender or any attorney appointed for the charged person must be deposited in the account established in 53-9-109.

(2) The division may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the division to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant, provided that the division has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims' assistance coordinating and planning program.

History: En. 71-2605 by Sec. 5, Ch. 527, L. 1977; R.C.M. 1947, 71-2605; amd. Sec. 2, Ch. 367, L. 1979; amd. Sec. 1, Ch. 533, L. 1987; amd. Sec. 3, Ch. 68, L. 1989; amd. Sec. 2, Ch. 354, L. 1991.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Subpoenas and witnesses, Title 26, ch. 2.

53-9-105. Rehabilitation of victims. The division shall refer to the department of public health and human services victims who have been permanently disabled through criminally injurious conduct, who are receiving benefits under this part, and who in the opinion of the division may be vocationally rehabilitated. The department of public health and human services shall provide for the vocational rehabilitation of the victims under its rehabilitation programs to the extent funds are available under the programs.

History: En. 71-2616 by Sec. 16, Ch. 527, L. 1977; R.C.M. 1947, 71-2616; amd. Sec. 462, Ch. 546, L. 1995.

Cross-References

Vocational rehabilitation, Title 53, ch. 7.

53-9-106. Attorneys' fees. (1) The division may grant attorneys' fees to attorneys for representing claimants before the division. Any attorney's fee granted by the division shall be in addition to compensation awarded the claimant under this part.

(2) The division may regulate the amount of the attorney's fee in any claim under this part when an attorney is representing a claimant.

(3) In cases under this part that go before a district court, the judge may grant, in addition to compensation benefits granted, attorneys' fees to attorneys for representing claimants before the court.

(4) In no claim or case may attorney fees in excess of 5% of the amount paid to a claimant or on his behalf be paid directly or indirectly to a claimant's attorney.

History: En. 71-2618 by Sec. 18, Ch. 527, L. 1977; R.C.M. 1947, 71-2618; amd. Sec. 2, Ch. 496, L. 1987.

Cross-References

Attorney fees, Title 25, ch. 10, part 3.

53-9-107. Public inspection and disclosure of division's records. (1) Except as provided in subsections (2) and (3), the records the division maintains in its possession in the administration of this part are open to public inspection and disclosure.

(2) Confidential criminal justice information obtained by the division is subject to the confidentiality provisions of the Montana Criminal Justice Information Act of 1979, Title 44, chapter 5.

(3) In assuring that the right of individual privacy so essential to the well-being of a free society may not be infringed without the showing of a compelling state interest, the following public records of the division are exempt from disclosure:

(a) information of a personal nature, such as personal, medical, or similar information, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure has the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

(b) any public records or information, the disclosure of which is prohibited by federal law or regulations.

(4) If any public record of the division contains material that is not exempt under subsection (3), as well as material that is exempt from disclosure, the division shall separate the exempt and nonexempt and make the nonexempt material available for examination.

History: **En. 71-2619 by Sec. 19, Ch. 527, L. 1977; R.C.M. 1947, 71-2619; amd. Sec. 3, Ch. 496, L. 1987; amd. Sec. 45, Ch. 286, L. 1997.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

53-9-108. Limitation of benefit entitlements to proportionate share of available funds. Claimants receiving benefits under this part are not granted an absolute entitlement to benefits. Benefits must be paid in accordance with the amount of the legislative appropriation. If the division determines at any time that the appropriated funds for a fiscal year will not be an amount that will fully pay all claims, the division may make appropriate proportionate reductions in benefits to all claimants. Such reductions do not entitle claimants to future retroactive reimbursements in future fiscal years unless the legislature makes appropriations for such retroactive benefits.

History: **En. 71-2620 by Sec. 20, Ch. 527, L. 1977; R.C.M. 1947, 71-2620.**

53-9-109. Crime victims compensation and assistance account. (1) There is a crime victims compensation and assistance account in the state special revenue fund. There must be paid into this account 18% of the fines assessed and bails forfeited, except those paid to a justice's court, on all offenses involving a violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 that are a result of citations or tickets issued by the highway patrol. Except as provided in subsection (2), the money in the account must be used solely for the purposes of this part and for victims' assistance program coordination and planning provided by the division.

(2) The fund balance in the account as of March 31 of each year is limited to $500,000. Whenever the fund balance on March 31 exceeds $500,000, the amount of the fund balance in excess of $500,000 must be deposited in the general fund. *(See compiler's comments for contingent termination of certain text.)*

History: **En. 71-2624 by Sec. 25, Ch. 527, L. 1977; R.C.M. 1947, 71-2624; amd. Sec. 3, Ch. 367, L. 1979; amd. Sec. 97, Ch. 421, L. 1979; amd. Sec. 1, Ch. 567, L. 1981; amd. Sec. 27, Ch. 281, L. 1983; amd. Sec. 37, Ch. 557, L. 1987; amd. Sec. 4, Ch. 68, L. 1989; amd. Sec. 3, Ch. 354, L. 1991; amd. Sec. 1, Ch. 19, Sp. L. January 1992; amd. Sec. 4, Ch. 11, Sp. L. July 1992; amd. Sec. 1, Ch. 3, Sp. L. November 1993; amd. Sec. 60, Ch. 18, L. 1995.**

Compiler's Comments

Contingent Termination: Section 3, Ch. 3, Sp. L. November 1993, provided that the amendment by Ch. 3 terminates if and on the date that the Secretary of State receives a certification from the Governor that federal crime victims compensation funds will not be awarded.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Traffic regulations — penalties, 61-8-711 through 61-8-720.

53-9-110. Receipt of federal funds. The division may adopt appropriate rules in order to receive federal funds under federal criminal reparation and compensation acts.

History: **En. 71-2622 by Sec. 22, Ch. 527, L. 1977; R.C.M. 1947, 71-2622.**

53-9-111. Penalty for fraudulently obtaining benefits. Any person who knowingly makes a false claim or a false statement or uses any other fraudulent device in connection with any claim is guilty of theft as provided in 45-6-301 and upon conviction shall, in addition to being punished as provided by that section, forfeit and repay any compensation paid under this part.

History: En. 71-2623 by Sec. 23, Ch. 527, L. 1977; R.C.M. 1947, 71-2623.

Cross-References

False claims to public agencies, 45-7-210.

53-9-112 through 53-9-120 reserved.

53-9-121. Application for compensation. An applicant for an award of compensation may apply in writing in a form that conforms substantially to that prescribed by the division.

History: En. 71-2606 by Sec. 6, Ch. 527, L. 1977; R.C.M. 1947, 71-2606(1).

53-9-122. Informal hearings. The division may hold informal hearings in order to make determinations regarding the compensability of a claim. At such hearings, the division may subpoena witnesses and documents as set forth in 2-4-104. Hearings held under this section are not considered contested case hearings under the Montana Administrative Procedure Act. However, the division shall adopt rules regarding its informal hearing procedures.

History: En. 71-2607 by Sec. 7, Ch. 527, L. 1977; R.C.M. 1947, 71-2607.

53-9-123. Evidence of condition. (1) The division may require the claimant to supplement the application with any reasonably available medical reports relating to the injury for which compensation is claimed.

(2) If the physical condition of a victim or claimant is material to a claim, the division may order the victim or claimant to submit from time to time to a physical examination by a physician or may order an autopsy of a deceased victim. The division shall pay for such examination or autopsy. The order shall specify the time, place, manner, conditions, and scope of the examination or autopsy and the person by whom it is to be made and shall require the person to file with the division a detailed written report of the examination or autopsy. The report shall set out his findings, including results of all tests made, diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions. On request of the person examined, the division shall furnish him a copy of the report. If the victim is deceased, the division, on request, shall furnish the claimant a copy of the report.

(3) There is no privilege, except privileges arising from the attorney-client relationship, as to communications or records relevant to an issue of the physical condition of the claimant or victim in a proceeding under this part in which that condition is an element.

History: En. 71-2608 by Sec. 8, Ch. 527, L. 1977; R.C.M. 1947, 71-2608.

Cross-References

Attorney-client privilege, 26-1-803.

53-9-124. Enforcement of division's orders — improper assertion of privilege. If a person refuses to comply with an order of the division or asserts a privilege to withhold or suppress evidence relevant to a claim, except privileges arising from the attorney-client relationship, the division may make any just order, including denial of the claim.

History: En. 71-2609 by Sec. 9, Ch. 527, L. 1977; R.C.M. 1947, 71-2609.

Cross-References

Attorney-client privilege, 26-1-803.

53-9-125. Limitations on awards. (1) Except as otherwise provided in this section, compensation may not be awarded unless the claim is filed with the division within 1 year after the day the criminally injurious conduct occurred causing the injury or death upon which the claim is based. Compensation in cases involving sexual offenses against minors may not be awarded unless the claim is filed with the division within 1 year after the day the criminally injurious conduct was reported to a law enforcement agency or an agency of the state responsible for provision of child welfare services, or within 1 year after the day the victim reaches 18 years of age, whichever occurs last. The time for filing a claim may be extended by the division for good cause shown.

(2) Compensation may not be awarded to a claimant who is the offender or an accomplice of the offender or to any claimant if the award would unjustly benefit the offender or accomplice.

(3) Compensation may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer. The report must be made within 72 hours after its occurrence, except in a case involving a sexual offense against a minor or when the division finds there was good cause for the failure to report within that time.

(4) In order to be entitled to benefits under this part, a claimant must fully cooperate with all law enforcement agencies and prosecuting attorneys in the apprehension and prosecution of the offender causing the criminally injurious conduct. The division, upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies or prosecuting attorneys, may deny or reconsider and reduce an award of compensation.

(5) Compensation otherwise payable to a claimant shall be reduced or denied to the extent the compensation benefits payable are or can be recouped from collateral sources.

(6) Persons serving a sentence of imprisonment or residing in any other public institution which provides for the maintenance of such person are not entitled to the benefits of this part.

(7) Compensation may be denied or reduced if the victim contributed to the infliction of death or injury with respect to which the claim is made. Any reduction in benefits under this subsection shall be in proportion to what the division finds to be the victim's contribution to the infliction of death or injury.

History: En. 71-2606 by Sec. 6, Ch. 527, L. 1977; R.C.M. 1947, 71-2606(2) thru (7); amd. Sec. 4, Ch. 367, L. 1979; amd. Sec. 1, Ch. 235, L. 1991; amd. Sec. 3, Ch. 397, L. 1991.

53-9-126. Tentative award of compensation. If the division determines that the claimant will suffer financial hardship unless a tentative award is made and it appears likely that a final award will be made, an amount may be paid to the claimant, to be deducted from the final award or repaid by and recoverable from the claimant to the extent that it exceeds the final award.

History: En. 71-2614 by Sec. 14, Ch. 527, L. 1977; R.C.M. 1947, 71-2614.

53-9-127. Award of compensation. (1) The division shall award compensation benefits under this part if satisfied by a preponderance of the evidence that the requirements for compensation have been met.

(2) An award may be made whether or not any person is prosecuted or convicted. Proof of conviction of a person whose acts give rise to a claim is conclusive evidence that the crime was committed unless an application for rehearing, an appeal of the conviction, or certiorari is pending or a rehearing or new trial has been ordered.

(3) The division may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent and may make a tentative award under 53-9-126.

History: (1)En. 71-2604 by Sec. 4, Ch. 527, L. 1977; Sec. 71-2604, R.C.M. 1947; (2), (3)En. 71-2610 by Sec. 10, Ch. 527, L. 1977; Sec. 71-2610, R.C.M. 1947; R.C.M. 1947, 71-2604, 71-2610.

53-9-128. Compensation benefits. (1) A claimant is entitled to weekly compensation benefits when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct. During the time the claimant seeks weekly benefits, the claimant, as a result of the injury, must have no reasonable prospect of being regularly employed in the normal labor market. The weekly benefit amount is 66 ⅔% of the wages received at the time of the criminally injurious conduct, subject to a maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly compensation payments must be made at the end of each 2-week period. Weekly compensation payments may not be paid for the first week after the criminally injurious conduct occurred, but if total actual loss of wages continues for 1 week, weekly compensation payments must be paid from the date the wage loss began. Weekly compensation payments must continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market.

(2) The claimant is entitled to be reimbursed for reasonable services by a physician or surgeon, reasonable hospital services and medicines, and other treatment approved by the division for the injuries suffered due to criminally injurious conduct. Unless expressly requested by the claimant, benefits may not be paid under this subsection until the claimant has been fully compensated for total wage loss benefits as provided in subsection (1) or (7).

(3) (a) The dependents of a victim who is killed as a result of criminally injurious conduct are entitled to receive, in a gross single amount payable to all dependents, weekly benefits amounting to 66 ⅔% of the wages received at the time of the criminally injurious conduct causing the death, subject to a maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly compensation payments must be made at the end of each 2-week period.

(b) Benefits under subsection (3)(a) must be paid to the spouse for the benefit of the spouse and other dependents unless the division determines that other payment arrangements should be made. If a spouse dies or remarries, benefits under subsection (3)(a) must cease to be paid to the spouse but must continue to be paid to the other dependents as long as their dependent status continues.

(4) Reasonable funeral and burial expenses of the victim, not exceeding $3,500, must be paid if all other collateral sources have properly paid expenses but have not covered all expenses.

(5) Compensation payable to a victim and all of the victim's dependents in cases of the victim's death because of injuries suffered due to an act of criminally injurious conduct may not exceed $25,000 in the aggregate.

(6) Compensation benefits are not payable for pain and suffering, inconvenience, physical impairment, or nonbodily damage.

(7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result of the injury has no reasonable prospect of being regularly employed in the normal labor market and who was employable but was not employed at the time of the injury may in the discretion of the division be awarded weekly compensation benefits in an amount determined by the division not to exceed $100 per week. Weekly compensation payments must continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market. The claimant must be awarded benefits as provided in subsection (2).

(b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was employable but not employed at the time of death may in the discretion of the division be awarded, in a gross single amount payable to all dependents, a sum not to exceed $100 per week, which is payable in the manner and for the period provided by subsection (3)(b) or for a shorter period as determined by the division. The claimant must be awarded benefits as provided in subsection (4).

(8) Except for benefits paid under subsections (3), (5), and (7)(b) or other benefits paid when the victim is killed as a result of criminally injurious conduct, amounts payable as weekly compensation may not be commuted to a lump sum and may not be paid less frequently than every 2 weeks.

(9) (a) Subject to the limitations in subsection (9)(c), the spouse, parent, child, brother, or sister of a victim who is killed as a result of criminally injurious conduct is entitled to reimbursement for mental health treatment received as a result of the victim's death.

(b) Subject to the limitations in subsection (9)(c), the parent, brother, or sister of a minor who is a victim of criminally injurious conduct involving a sexual offense and who is not entitled to receive services under Title 41, chapter 3, is entitled to reimbursement for mental health treatment received as a result of that criminally injurious conduct.

(c) Total payments made under subsections (9)(a) and (9)(b) may not exceed $2,000 or 12 consecutive months of treatment for each person, whichever occurs first.

History: (1) thru (7)En. 71-2612 by Sec. 12, Ch. 527, L. 1977; Sec. 71-2612, R.C.M. 1947; (8)En. 71-2613 by Sec. 13, Ch. 527, L. 1977; Sec. 71-2613, R.C.M. 1947; R.C.M. 1947, 71-2612, 71-2613(1); amd. Sec. 1, Ch. 203, L. 1987; amd. Sec. 4, Ch. 496, L. 1987; amd. Sec. 5, Ch. 68, L. 1989; amd. Sec. 38, Ch. 125, L. 1995; amd. Sec. 9, Ch. 186, L. 1997.

53-9-129. Award not subject to execution, attachment, garnishment, or assignment — exception. (1) An award is not subject to execution, attachment, garnishment, or other process.

(2) An assignment or agreement to assign a right to compensation in the future is unenforceable except:

(a) an assignment of a right to compensation for work loss to secure payment of maintenance or child support; or

(b) an assignment of a right to compensation to the extent that the benefits are for the cost of products, services, or accommodations necessitated by the injury or death on which the claim is based and are provided or to be provided by the assignee.

History: En. 71-2613 by Sec. 13, Ch. 527, L. 1977; R.C.M. 1947, 71-2613(2), (3).

Cross-References

Child support — income deduction, Title 40, ch. 5, part 3.

Child support — administrative income withholding, Title 40, ch. 5, part 4.

53-9-130. Reconsideration and review of division's decisions. (1) The division on its own motion or on request of the claimant may reconsider a decision making or denying an award or determining its amount. The division shall reconsider at least annually every award being paid in installments. An order on reconsideration of an award may not require refund of amounts previously paid unless the award was obtained by fraud.

(2) The right of reconsideration does not affect the finality of a division decision for the purpose of appeal.

History: En. 71-2615 by Sec. 15, Ch. 527, L. 1977; R.C.M. 1947, 71-2615.

53-9-131. Appeals. After the division has made final determination concerning any matter relating to a claim, if the claimant disputes the division's determination, he may appeal to the district court for the county in which he resides or Lewis and Clark County for review. Review on appeal must be in conformity with 2-4-701 through 2-4-704 of the Montana Administrative Procedure Act. The judge, after a hearing, shall make a final determination concerning the dispute and issue an appropriate order affirming, reversing, or modifying the division's determination.

History: En. 71-2617 by Sec. 17, Ch. 527, L. 1977; R.C.M. 1947, 71-2617; amd. Sec. 5, Ch. 496, L. 1987.

53-9-132. Subrogation. (1) If a claimant seeks compensation under this part and compensation is awarded, the division is entitled to full subrogation against a judgment or recovery received by the claimant against the offender or a collateral source arising from the criminally injurious conduct committed by the offender for all compensation paid under this part. The division's right of subrogation shall be a first lien on the judgment or recovery. If the claimant does not institute the action against the offender or collateral source within 1 year from the date the criminally injurious conduct occurred, the division may institute the action in the name of the claimant or the claimant's personal representative.

(2) If the claimant institutes the action, the division shall pay a proportional share of costs and attorneys' fees if it recovers under its subrogation interest.

(3) If the division institutes the action in the name of the claimant or the claimant's personal representative and the recovery is in excess of the amount of compensation paid to the claimant and costs incurred by the division in pursuit of the action, the excess shall be paid to the claimant.

(4) If a judgment or recovery includes both damages for bodily injury or death for which the division has paid compensation under this part and damages for which the division has not paid compensation, then the division's subrogation interest shall apply only to that proportion of the judgment or

recovery for which it has paid compensation. In a civil action in a court of this state arising out of criminally injurious conduct, the judge, on timely motion, shall direct the jury to return a special verdict indicating separately the amounts of the various items of damages awarded. A claimant may not make recoveries against the offender or collateral source in such a way as to avoid and preclude the division from receiving its proper subrogation share as provided in this section. The division shall release its lien provided for in subsection (1) above upon receipt of its subrogation share.

History: En. 71-2611 by Sec. 11, Ch. 527, L. 1977; R.C.M. 1947, 71-2611; amd. Sec. 6, Ch. 496, L. 1987.

Cross-References

Liens, Title 71, ch. 3.

53-9-133. Effect of award on probation and parole of offender. (1) When placing any convicted person on probation the court may set as a condition of probation the payment to the state of an amount equal to any benefits paid by the division to a victim or a victim's dependents. The court may set a repayment schedule and modify it as circumstances change.

(2) Payment of the debt may be made a condition of parole subject to modification based on a change in circumstances.

History: En. 71-2621 by Sec. 21, Ch. 527, L. 1977; R.C.M. 1947, 71-2621.

Cross-References

Sentences that may be imposed, 46-18-201.

CHAPTER 10

ADMINISTRATION OF HUMAN SERVICES

Part 1 — Plan for Delivery of Human Services (Not Codified—Temporary)

Parts 2 through 4 reserved

Part 5 — Community Services Block Grant Program

53-10-501. Definitions.
53-10-502. Allocation of federal community services block grant funds.
53-10-503. Eligible human resource development councils.
53-10-504. Block grant plan — county and state approval.
53-10-505. Fiscal and program responsibility.

Part 1

Plan for Delivery of Human Services (Not Codified — Temporary)

Part Compiler's Comments

Histories of Not Codified Sections:

53-10-101. En. Sec. 1, Ch. 520, L. 1979; amd. Sec. 10, Ch. 274, L. 1981.

53-10-102. En. Sec. 2, Ch. 520, L. 1979.

53-10-103. En. Sec. 3, Ch. 520, L. 1979.

Parts 2 through 4 reserved

Part 5
Community Services Block Grant Program

53-10-501. Definitions. As used in this part, the following definitions apply:

(1) "Block grant" means the federal community services block grant established under 42 U.S.C. 9901, et seq.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Human resource development council" means a nonprofit public or private community organization serving low-income persons in a multicounty area that has the same boundaries as one or more substate planning districts established by executive order of the governor.

History: En. Sec. 1, Ch. 237, L. 1983; amd. Sec. 463, Ch. 546, L. 1995.

Cross-References

Low-income home weatherization programs — allocation by substate planning districts, Title 90, ch. 4, part 2.

53-10-502. Allocation of federal community services block grant funds. The department shall allocate the state's share of the block grant funds as follows:

(1) The department may retain 5% for administrative costs and 5% for special projects.

(2) The balance of the block grant funds after any retention pursuant to subsection (1) must be distributed to human resource development councils that are eligible to receive such funding under 53-10-503 as follows:

(a) $500,000, or if the balance of the block grant funds is less than $500,000, then the entire balance of the block grant funds, must be equally divided among the eligible human resource development councils; and

(b) except as provided under 53-10-504(2), the balance of the block grant funds after distribution under subsections (1) and (2)(a) must be divided among eligible human resource development councils as follows:

(i) one-half based upon the population residing within the areas of human resource development councils; and

(ii) one-half based upon the low-income population, as that population may be determined under the provisions of the block grant, residing within the areas of the human resource development councils.

History: En. Sec. 2, Ch. 237, L. 1983.

53-10-503. Eligible human resource development councils. The department may not distribute block grant funds unless the human resource development council:

(1) meets the eligibility requirements set forth in 42 U.S.C. 9904, including composition of the board; and

(2) has complied with federal and state fiscal control requirements and agrees to comply with all fiscal and program requirements of federal law.

History: En. Sec. 3, Ch. 237, L. 1983.

53-10-504. Block grant plan — county and state approval. (1) A human resource development council shall prepare a plan for use of block grant funds. The planned use must be in compliance with block grant requirements, and the plan must be made to further the goals stated in the block grant.

(2) The human resource development council shall submit the plan to the county governing bodies within its multicounty area. A county governing body may approve, disapprove, or offer amendments to the plan. If the county governing body and the human resources development council cannot agree as to the plan's components, the department shall prepare and approve a plan for such county. The department shall then allocate block grant funds to the appropriate human resource development council to administer according to the plan approved for such county by the department.

(3) The plan must be submitted to the department for approval prior to distribution by the department of block grant funds allocated to the human resource development council. The department may disapprove a plan, in whole or in part, only if the plan conflicts with a federal law or regulation. A disapproved plan may be amended and resubmitted to the department.

History: En. Sec. 4, Ch. 237, L. 1983.

53-10-505. Fiscal and program responsibility. The department shall ensure state compliance in fiscal accountability and program integrity relating to block grant funds and services. The department shall audit the human resource development councils as may be required by state and federal law.

History: En. Sec. 5, Ch. 237, L. 1983.

CHAPTERS 11 THROUGH 17

RESERVED

CHAPTER 18

SELF-SUFFICIENCY TRUSTS

Part 1 — General Provisions

53-18-101. Definitions.
53-18-102. Creation of self-sufficiency trust account.
53-18-103. Administration of trust account.
53-18-104. Benefits not affected.
53-18-105. Special account.

Part 1
General Provisions

53-18-101. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Self-sufficiency trust" means a trust created by a nonprofit corporation that is a 501(c)(3) organization under the United States Internal Revenue Code of 1954, as amended, and that was organized under the Montana Nonprofit Corporation Act, Title 35, chapter 2, for the purpose of providing for the care and treatment of one or more persons who are residents of this state and are persons with developmental disabilities, mental illness, or physical disabilities or are otherwise eligible for department services, as defined by the department.

History: En. Sec. 1, Ch. 542, L. 1989; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 464, Ch. 546, L. 1995; amd. Sec. 58, Ch. 472, L. 1997.

53-18-102. Creation of self-sufficiency trust account. (1) There is created a self-sufficiency trust account in the state treasury. The state treasurer shall deposit to the credit of the trust account money received from a self-sufficiency trust for that purpose. The state treasurer shall direct payments from the trust account upon claims certified by the director of the department.

(2) The assets of the trust account must be preserved, invested, and expended in the manner and for the purposes provided in 53-18-103. At the end of each fiscal year, the unexpended account balance must carry forward to the next fiscal year and may not revert to the state general fund.

History: En. Sec. 2, Ch. 542, L. 1989; amd. Sec. 31, Ch. 325, L. 1995.

53-18-103. Administration of trust account. (1) The department may accept money from a self-sufficiency trust for deposit in the self-sufficiency trust account pursuant to an agreement with the self-sufficiency trust naming one or more beneficiaries who are residents of this state and are persons with developmental disabilities, mental illness, or physical disabilities or are otherwise eligible for department services, as defined by the department. The agreement must specify the care or treatment to be provided for each named beneficiary. Money in the trust account must be accounted for separately for each named beneficiary. The department of public health and human services shall administer the trust account for beneficiaries who are mentally ill.

(2) (a) The department shall adopt rules to administer the trust account.

(b) The money in the trust account may be spent by the department, pursuant to its rules, only to provide care or treatment for the named beneficiary in accordance with the terms of the agreement.

(c) If the director of the department determines that the money in the trust account for a named beneficiary cannot be used for the care and treatment of the beneficiary in a manner consistent with the rules of the department and the agreement or upon request of the self-sufficiency trust, the remaining money in the trust account for the named beneficiary, together with any accumulated interest, must be promptly returned to the self-sufficiency trust that provided the money for deposit in the trust account.

(3) The trust account money must be deposited in the state treasury and invested as required by law and the earnings credited to the trust account.

History: En. Sec. 3, Ch. 542, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 465, Ch. 546, L. 1995; amd. Sec. 59, Ch. 472, L. 1997.

53-18-104. Benefits not affected. Receipt by a beneficiary of supplemental services as a result of the self-sufficiency trust account or of care and treatment provided by the trust may not in any way reduce, impair, or diminish the benefits to which the beneficiary is otherwise entitled by law.

History: En. Sec. 4, Ch. 542, L. 1989.

53-18-105. Special account. There is created within the self-sufficiency trust account a special account for the disabled. The director of the department may accept money from any source for deposit into the special account. The money in the special account must be used by the department, subject to appropriation, for the purpose of providing for the care and treatment of low-income persons with developmental disabilities, mental illness, or physical disabilities or low-income persons otherwise eligible for department services, as defined by the department.

History: En. Sec. 5, Ch. 542, L. 1989; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 60, Ch. 472, L. 1997.

CHAPTER 19

PHYSICALLY DISABLED

Part 1 — Services and Community Homes

53-19-101. Purpose.
53-19-102. Definitions.
53-19-103. Department authorized to provide services.
53-19-104. Department contracts for services — governmental units providing for community homes for persons with severe disabilities.
53-19-105. Federal and other aid.
53-19-106. Eligibility for services.
53-19-107 through 53-19-109 reserved.
53-19-110. Eligibility for residential services in a community home for persons with severe disabilities.
53-19-111. Repealed.
53-19-112. Rulemaking.
53-19-113. Repealed.

Part 2 — Community Home Licensing (Renumbered by Code Commissioner, 1991)

Part 3 — Telecommunications Services

53-19-301. Legislative findings and declaration.
53-19-302. Definitions.
53-19-303. Term of office — vacancies.
53-19-304. Officers — meetings — quorum — compensation.
53-19-305. Power and duties.
53-19-306. Program established — purpose.
53-19-307. Provision of services.
53-19-308. Telecommunications relay service system — requirements.
53-19-309. Gifts and grants.
53-19-310. Fund for telecommunications services for persons with disabilities.
53-19-311. Special assessment.
53-19-312. Records — audit.

Part 1
Services and Community Homes

Part Cross-References

Accessibility of polling places, Title 13, ch. 3, part 2.

53-19-101. Purpose. The legislature, in recognition of needs of persons with severe disabilities and of the desirability of meeting those needs on a community level to the extent of available funding and in order to reduce the need for institutional care settings, establishes by this part a community program to assist persons with severe disabilities to live and function independently. This program implements Title VII of the federal Rehabilitation Act of 1973 (29 U.S.C. 796, et seq.), as may be amended, for persons with severe disabilities in Montana.

History: En. Sec. 1, Ch. 713, L. 1985; amd. Sec. 3, Ch. 514, L. 1987; amd. Sec. 1, Ch. 330, L. 1989; amd. Sec. 3, Ch. 326, L. 1993.

53-19-102. Definitions. As used in this part, the following definitions apply:

(1) "Community home for persons with severe disabilities" means a facility licensed by the department, as provided for in 52-4-201 through 52-4-205.

(2) "Department" means the department of public health and human services established in 2-15-2201.

(3) "Disability" means a permanent physical or mental condition recognized as a disability by Title VII of the federal Rehabilitation Act of 1973, 29 U.S.C. 796, et seq., as may be amended.

(4) "Live and function independently" means to have control over one's life based upon a choice between acceptable options in a manner that minimizes reliance upon others for making decisions and conducting activities of daily living.

(5) "Person with a severe disability" means the same as "individual with a severe disability" as defined in the federal Rehabilitation Act of 1973, 29 U.S.C. 706(15)(B), as may be amended. The term includes an individual whose ability to function independently in family or community or whose ability to engage or continue in employment is so limited by the severity of the physical or mental disability that the services provided under this part are required in order for the individual to achieve a greater level of independence in functioning in family or community or in engaging in or continuing in employment.

History: En. Sec. 2, Ch. 713, L. 1985; amd. Sec. 4, Ch. 514, L. 1987; amd. Sec. 2, Ch. 330, L. 1989; amd. Sec. 4, Ch. 326, L. 1993; amd. Sec. 466, Ch. 546, L. 1995; amd. Sec. 242, Ch. 42, L. 1997; amd. Sec. 61, Ch. 472, L. 1997.

53-19-103. Department authorized to provide services. (1) Subject to available appropriated funds, services provided under this part include:

(a) vocational and other rehabilitation services that enhance the ability of a person with severe disabilities to live and function independently and to engage in or continue in appropriate employment; and

(b) any services specified in Title VII of the federal Rehabilitation Act of 1973 (29 U.S.C. 796, et seq.), as may be amended.

(2) To the extent that funds are appropriated and allocated for the purpose of providing services to persons with severe disabilities, the department may establish the facilities and services it determines are in the best interest of persons with severe disabilities.

(3) The scope, amount, and duration of services made available to persons with severe disabilities under this part are within the discretion of the department to determine.

History: En. Sec. 3, Ch. 713, L. 1985; amd. Sec. 5, Ch. 514, L. 1987; amd. Sec. 3, Ch. 330, L. 1989.

53-19-104. Department contracts for services — governmental units providing for community homes for persons with severe disabilities. (1) The department may expend money appropriated or available for the purposes of this part and may contract for services for eligible persons with any person or entity providing the services to persons with severe disabilities.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning, may at their own expense provide services, funds, materials, and facilities for services to community homes for persons with severe disabilities.

History: En. Sec. 4, Ch. 713, L. 1985; amd. Sec. 6, Ch. 514, L. 1987; amd. Sec. 4, Ch. 330, L. 1989.

Cross-References

Public contracts generally, Title 18, ch. 1.

53-19-105. Federal and other aid. The department may apply for and receive federal-aid money or other assistance that may be available for programs in the nature of the program created by this part.

History: En. Sec. 5, Ch. 713, L. 1985.

53-19-106. Eligibility for services. (1) The department, in its discretion and in accordance with this part and Title VII of the federal Rehabilitation Act of 1973 (29 U.S.C. 796, et seq.), as may be amended, may determine eligibility of persons for services under this part.

(2) To be eligible for services under this part, a person must have a disability of such severity that, to secure and maintain employment or to function independently, he requires intensive vocational or comprehensive rehabilitation services.

(3) A person with severe disabilities not receiving other vocational and rehabilitation services provided by the department has priority for services provided under this part.

History: En. Sec. 1, Ch. 514, L. 1987; amd. Sec. 5, Ch. 330, L. 1989.

53-19-107 through 53-19-109 reserved.

53-19-110. Eligibility for residential services in a community home for persons with severe disabilities. (1) The department, in its discretion and in accordance with this part, may determine eligibility for residential services in a community home for persons with severe disabilities, based on the residential needs of the person and on the availability of residential services. Any person with a severe disability, as defined in 52-4-202, may be considered for placement in a community home, regardless of the source of funding for his residential services.

(2) A person who has a primary diagnosis of mental illness or who receives mental health services under Title 53, chapter 21, is not eligible for placement in a community home for persons with severe disabilities unless he is eligible for and receiving services under this part and Title VII of the federal Rehabilitation Act of 1973 (29 U.S.C. 796, et seq.), as may be amended, or Title XIX of the Social Security Act (42 U.S.C. 1396, et seq.), as may be amended.

History: En. Sec. 2, Ch. 514, L. 1987; amd. Sec. 6, Ch. 330, L. 1989.

53-19-111. Repealed. Sec. 16, Ch. 330, L. 1989.

History: En. Sec. 6, Ch. 713, L. 1985; amd. Sec. 7, Ch. 514, L. 1987.

53-19-112. Rulemaking. (1) For the purposes of providing services to persons with severe disabilities, the department may adopt rules necessary for the administration of services provided under this part. Rules adopted may include but are not limited to eligibility for services, facility design and acquisition, program staffing, staff training, service goals and design, quality of services, client placement procedures, client rights and privileges, client grievance procedures, fair hearings, provider grievance procedures, and accounting procedures which include accounting of client financial resources.

(2) The department shall, in cooperation with the board of nursing, adopt rules under which a properly trained staff member of a facility providing services to persons with severe disabilities under this part may supervise and assist a client of a facility in taking a medication if the medication is usually self-administered and if a physician has prescribed the assistance.

History: En. Sec. 7, Ch. 713, L. 1985; amd. Sec. 8, Ch. 514, L. 1987; amd. Sec. 7, Ch. 330, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-19-113. Repealed. Sec. 16, Ch. 330, L. 1989.

History: En. Sec. 8, Ch. 713, L. 1985.

Part 2

Community Home Licensing (Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered:

53-19-201. Renumbered 52-4-201.
53-19-202. Renumbered 52-4-202.
53-19-203. Renumbered 52-4-203.
53-19-204. Renumbered 52-4-204.
53-19-205. Renumbered 52-4-205.

Part 3

Telecommunications Services

53-19-301. Legislative findings and declaration. (1) The legislature finds and declares that many Montana citizens have physical disabilities and are unable to use traditional telecommunications equipment and services without assistance. These citizens constitute a substantial and valuable resource within the United States and the state of Montana, and this segment of our population needs access to telecommunications services in order to function as contributing and productive members of our society.

(2) The legislature further finds and declares that the role of telecommunications in our world today is inestimable. Telecommunications is the primary vehicle of commerce and industry, the means to convey and receive information and knowledge, and the way that we connect with others on a personal as well as business level. Telecommunications gives people independence and self-sufficiency, and it provides goods and services, human contact, and fellowship.

(3) The legislature further finds that access to telecommunications services should be provided to persons who have disabilities not only for their own sake but for the benefit of society at large. Access to telecommunications services would enhance the business and personal lives of persons with disabilities, and its availability to persons with disabilities would be an investment of benefit to all of Montana.

(4) Consistent with the findings stated in subsections (1) through (3), the legislature finds it appropriate to provide persons with disabilities access to telecommunications services by creating a program to make specialized telecommunications equipment and services available to persons with disabilities.

History: En. Sec. 1, Ch. 669, L. 1989; amd. Sec. 2, Ch. 396, L. 1997; amd. Sec. 62, Ch. 472, L. 1997.

53-19-302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Committee" means the committee on telecommunications access services for persons with disabilities established in 2-15-2212.

(2) "Local exchange company" means a telecommunications company that provides telephone access lines or wireless service to members of the general public who are its customers.

(3) "Person with a disability" means the condition of a person who is deaf and blind, deaf, hard-of-hearing, or speech-impaired.

(4) "Program" means the program established in 53-19-306.

(5) "Specialized telecommunications equipment" means any telecommunications device that enables or assists a person with a disability to communicate with others by means of the conventional telephone network. The term includes but is not limited to text telephones (TTY), amplifiers, signaling devices, puff-blow devices, electronic artificial larynx devices, and telebraille.

(6) "Telecommunications relay service" means a service that permits full and simultaneous communication between those using specialized telecommunications equipment and those using conventional telephone equipment.

(7) "Telephone access line" means the telephone exchange access line or channel or wireless service that provides the customer of a local exchange company with access to the telecommunications network to effect the transfer of information.

History: En. Sec. 2, Ch. 669, L. 1989; amd. Sec. 3, Ch. 396, L. 1997; amd. Sec. 63, Ch. 472, L. 1997.

53-19-303. Term of office — vacancies. (1) Each member of the committee shall serve for a term of 3 years.

(2) A vacancy on the committee must be filled in the same manner as the original appointment.

History: **En. Sec. 4, Ch. 669, L. 1989; amd. Sec. 4, Ch. 396, L. 1997.**

53-19-304. Officers — meetings — quorum — compensation. (1) The committee shall choose a presiding officer from its members.

(2) The committee shall meet at least four times a year and at other times as determined by the presiding officer or by a majority of the committee.

(3) Seven members of the committee constitute a quorum for the transaction of business.

(4) All members of the committee are entitled to reimbursement of expenses as provided in 2-18-501 through 2-18-503. Members of the committee who are not state employees are also entitled to receive compensation of $50 for each day that they are engaged in official business of the committee.

History: **En. Sec. 5, Ch. 669, L. 1989; amd. Sec. 5, Ch. 396, L. 1997.**

53-19-305. Power and duties. The committee shall oversee administration of the program provided for in 53-19-306. In fulfilling this duty, the committee shall:

(1) establish policies and procedures governing administration of the program;

(2) analyze and approve a budget for administration of services under the program;

(3) monitor the expenditure of funds for the program;

(4) provide for administration of eligibility and the delivery of services for the program as provided for in 53-19-306 through 53-19-309; and

(5) perform any other duties necessary to properly oversee administration of the program.

History: **En. Sec. 6, Ch. 669, L. 1989; amd. Sec. 70, Ch. 10, L. 1993.**

53-19-306. Program established — purpose. (1) The committee shall establish and administer a program to provide specialized telecommunications equipment and services to persons with disabilities.

(2) The purpose of the program is to:

(a) furnish specialized telecommunications equipment to meet the needs of persons with disabilities; and

(b) provide a telecommunications relay service system to connect persons with disabilities with all phases of public telecommunications service, including telecommunications service to emergency services and public safety agencies as defined in 10-4-101.

History: **En. Sec. 7, Ch. 669, L. 1989; amd. Sec. 6, Ch. 396, L. 1997; amd. Sec. 64, Ch. 472, L. 1997.**

53-19-307. Provision of services. In administering the program established in 53-19-306, the committee shall:

(1) develop an appropriate means test to determine eligibility for participation in the program;

(2) require that participants in the program be residents of Montana and that residency be maintained as a condition of eligibility for continued participation in the program;

(3) require that participants provide satisfactory evidence that they have disabilities and would benefit from the use of specialized telecommunications equipment;

(4) provide specialized telecommunications equipment to participants through loan, lease, cost sharing, or other methods that are determined appropriate by the committee;

(5) determine the type of specialized telecommunications equipment that it considers necessary and economically feasible for use by Montana's persons with disabilities;

(6) purchase or lease all specialized telecommunications equipment through bid by wholesale manufacturers on a competitive basis;

(7) require, as a condition of each equipment purchase or lease, that the original manufacturer provide repair and maintenance service for new and returned equipment;

(8) maintain records of each item of equipment, including the location, serial number, and telephone number of each device;

(9) at the discretion of the committee, require an appropriate security deposit for equipment at the time of delivery that must be refunded without interest when the equipment is returned;

(10) make reasonable efforts to recover equipment from those who become ineligible for continued participation in the program;

(11) provide a telecommunications relay service system that would be available statewide for operation 7 days a week, 24 hours a day, including holidays; and

(12) adopt rules necessary to administer the program.

History: En. Sec. 8, Ch. 669, L. 1989; amd. Sec. 7, Ch. 396, L. 1997; amd. Sec. 65, Ch. 472, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-19-308. Telecommunications relay service system — requirements. The committee shall contract with a qualified provider to design and implement a telecommunications relay service system that fulfills the purpose described in 53-19-306. The committee shall require, under the terms of the contract, that:

(1) the system relay all messages promptly and accurately;

(2) the system maintain the privacy of persons using the system; and

(3) the provider preserve the confidentiality of all telephone communications, except in instances in which the confidentiality would further a violation of the law.

History: En. Sec. 9, Ch. 669, L. 1989; amd. Sec. 8, Ch. 396, L. 1997.

53-19-309. Gifts and grants. The committee may accept contributions, gifts, and grants, in money or otherwise, to the program established in 53-19-306. Monetary contributions, gifts, and grants must be deposited in the fund provided for in 53-19-310.

History: En. Sec. 10, Ch. 669, L. 1989.

53-19-310. Fund for telecommunications services for persons with disabilities. (1) There is an account for telecommunications services for persons with disabilities in the state special revenue fund in the state treasury. The account consists of:

(a) all monetary contributions, gifts, and grants received by the committee as provided in 53-19-309; and

(b) all charges billed and collected pursuant to 53-19-311.

(2) The money in the account is allocated to the committee for purposes of implementing this part.

(3) All expenditures of the committee in administering this part must be paid from money deposited in the account.

History: En. Sec. 11, Ch. 669, L. 1989; amd. Sec. 9, Ch. 396, L. 1997; amd. Sec. 66, Ch. 472, L. 1997.

53-19-311. Special assessment. (1) A charge of 10 cents a month may be assessed on each telephone access line provided and billed by each local exchange company and is imposed for the purposes of this part.

(2) Each customer of a local exchange company is liable for payment to the local exchange company of any charge properly imposed pursuant to this part. The local exchange company is not liable for any uncollected charge, nor does the company have an obligation to take legal action to enforce the collection of any charge that is unpaid by its customers.

(3) Each local exchange company shall bill each customer for the charge provided for in subsection (1). Except as provided in subsection (4), all charges billed and collected by a local exchange company must be transmitted to the state treasurer no later than the last day of the month following the end of each calendar quarter in which the charge is billed. All charges received by the state treasurer must be deposited in the fund established in 53-19-310 to the credit of the committee.

(4) Each local exchange company may deduct and retain 3/4 of 1% of the total charges billed and collected each month to cover its administrative expenses in complying with the requirements of subsection (3).

History: En. Sec. 12, Ch. 669, L. 1989.

53-19-312. Records — audit. (1) Each local exchange company shall maintain a record of the charges billed and the charges collected pursuant to 53-19-311 for a period of 1 year from the date of billing or collection, respectively.

(2) The committee may require an audit of each local exchange company's records to assure proper accounting of all charges billed and collected pursuant to 53-19-311. The audit must be conducted at the expense of the committee.

History: En. Sec. 13, Ch. 669, L. 1989.

CHAPTER 20

DEVELOPMENTAL DISABILITIES

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Chapter Cross-References

Institutions and assistance, Art. XII, sec. 3, Mont. Const.

Fishing permits, 87-2-803, 87-2-804.

Part 1
Treatment

53-20-101. Purpose. The purpose of this part is to:

(1) secure for each person who may be a person with developmental disabilities such treatment and habilitation as will be suited to the needs of the person and to assure that such treatment and habilitation are skillfully and humanely administered with full respect for the person's dignity and personal integrity;

(2) accomplish this goal whenever possible in a community-based setting;

(3) accomplish this goal in an institutionalized setting only when less restrictive alternatives are unavailable or inadequate and only when a person is so severely disabled as to require institutionalized care; and

(4) assure that due process of law is accorded any person coming under the provisions of this part.

History: En. 38-1201 by Sec. 1, Ch. 468, L. 1975; R.C.M. 1947, 38-1201; amd. Sec. 21, Ch. 255, L. 1995.

53-20-102. Definitions. As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Community-based facilities" or "community-based services" means those facilities and services that are available for the evaluation, treatment, and habilitation of persons with developmental disabilities in a community setting.

(3) "Court" means a district court of the state of Montana.

(4) "Developmental disabilities professional" means a licensed psychologist, a licensed psychiatrist, or a person with a master's degree in psychology, who:

(a) has training and experience in psychometric testing and evaluation;

(b) has experience in the field of developmental disabilities; and

(c) is certified, as provided in 53-20-106, by the department of public health and human services.

(5) "Developmental disability" means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to mental retardation and that requires treatment similar to that required by mentally retarded individuals. A developmental disability is a disability that originated before the individual attained age 18, that has continued or can be expected to continue indefinitely, and that results in the person having a substantial disability.

(6) "Habilitation" means the process by which a person who has a developmental disability is assisted in acquiring and maintaining those life skills that enable the person to cope more effectively with personal needs and the demands of the environment and in raising the level of the person's physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

(7) "Individual treatment planning team" means the interdisciplinary team of persons involved in and responsible for the habilitation of a resident. The resident is a member of the team.

(8) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(9) "Qualified mental retardation professional" means a professional program staff person for the residential facility who the department of public health and human services determines meets the professional requirements necessary for federal certification of the facility.

(10) "Resident" means a person committed to a residential facility.

(11) "Residential facility" or "facility" means the Montana developmental center and the Eastmont human services center.

(12) "Residential facility screening team" means a team of persons, appointed as provided in 53-20-133, that is responsible for screening a respondent to determine if the commitment of the respondent to a residential facility is appropriate.

(13) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously developmentally disabled and in need of developmental disability services in a residential facility.

(14) "Responsible person" means a person willing and able to assume responsibility for a person who is seriously developmentally disabled or alleged to be seriously developmentally disabled.

(15) "Seriously developmentally disabled" means a person who:

(a) has a developmental disability;

(b) is impaired in cognitive functioning; and

(c) has behaviors that pose an imminent risk of serious harm to self or others or self-help deficits so severe as to require total care or near total care and who because of those behaviors or deficits, cannot be safely and effectively habilitated in community-based services.

History: En. 38-1202 by Sec. 2, Ch. 468, L. 1975; amd. Sec. 4, Ch. 37, L. 1977; amd. Sec. 1, Ch. 568, L. 1977; R.C.M. 1947, 38-1202(part); amd. Sec. 3, Ch. 132, L. 1983; amd. Sec. 1, Ch. 137, L. 1983; amd. Sec. 1, Ch. 569, L. 1983; amd. Sec. 5, Ch. 151, L. 1985; amd.

Sec. 1, Ch. 262, L. 1991; amd. Sec. 2, Ch. 381, L. 1991; amd. Sec. 1, Ch. 255, L. 1995; amd. Sec. 467, Ch. 546, L. 1995; amd. Sec. 67, Ch. 472, L. 1997.

Cross-References

Mental impairment defined similarly to developmentally disabled, 39-30-103.

Developmental disabilities defined for purposes of community-based services, 53-20-202.

53-20-103. Residential institution to meet standards. No person shall be admitted to any publicly supported residential institution caring for persons with developmental disabilities unless such institution meets the standards prescribed by this part.

History: En. 38-1231 by Sec. 31, Ch. 468, L. 1975; R.C.M. 1947, 38-1231; amd. Sec. 21, Ch. 255, L. 1995.

53-20-104. Powers and duties of mental disabilities board of visitors. (1) The board is an independent board of inquiry and review established to ensure that the treatment of all persons committed to a residential facility is humane and decent and meets the requirements set forth in this part.

(2) The board shall review all plans for experimental research or hazardous treatment procedures involving persons committed to a residential facility to ensure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health and human services. An experimental research project involving persons committed to a residential facility affected by this part may not be commenced unless it is approved by the mental disabilities board of visitors.

(3) The board shall investigate all cases of alleged mistreatment of a resident.

(4) The board shall at least annually inspect every residential facility that is providing a course of residential habilitation and treatment to any person pursuant to this part. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment or habilitation areas. The board shall inquire concerning all habilitation programs being implemented by the facility.

(5) The board shall inspect the file of each person committed to a residential facility pursuant to this part to ensure that a habilitation plan exists and is being implemented. The board shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

(6) The board may assist a resident at a residential facility in resolving a grievance the resident may have concerning the resident's commitment or course of treatment and habilitation in the facility.

(7) If the board believes that a facility is failing to comply with the provisions of this part in regard to its physical facilities or its treatment of a resident, it shall report its findings at once to the superintendent of the facility and the director of the department of public health and human services. If appropriate, after waiting a reasonable time for a response from the superintendent or the director, the board may notify the parents or guardian of the resident involved, the next of kin, if known, the responsible person

appointed by the court for the resident involved, and the district court that has jurisdiction over the facility.

(8) The board shall report annually to the governor concerning the status of the residential facilities and habilitation programs that it has inspected.

History: En. 38-1232 by Sec. 32, Ch. 468, L. 1975; amd. Sec. 18, Ch. 546, L. 1977; R.C.M. 1947, 38-1232(2) thru (7); amd. Sec. 1, Ch. 485, L. 1979; amd. Sec. 40, Ch. 112, L. 1991; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 3, Ch. 381, L. 1991; amd. Sec. 36, Ch. 349, L. 1993; amd. Sec. 2, Ch. 255, L. 1995; amd. Sec. 468, Ch. 546, L. 1995.

53-20-105. Repealed. Sec. 20, Ch. 255, L. 1995.

History: En. Sec. 2, Ch. 569, L. 1983.

53-20-106. Certification of developmental disabilities professionals. (1) A developmental disabilities professional must be certified by the department of public health and human services.

(2) The department of public health and human services shall adopt rules governing the certification of developmental disabilities professionals. The rules must establish the appropriate combination of education, skills, and experience necessary for certification and set forth qualifications developed by reference to recognized national standards in the field of developmental disabilities.

History: En. Sec. 3, Ch. 569, L. 1983; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 4, Ch. 381, L. 1991; amd. Sec. 3, Ch. 255, L. 1995; amd. Sec. 469, Ch. 546, L. 1995.

53-20-107. Department to compile list of qualified developmental disabilities professionals. The department of public health and human services shall compile and provide to each district court within the state a list of developmental disabilities professionals who possess competencies in the evaluation and habilitation of persons with developmental disabilities.

History: En. Sec. 6, Ch. 343, L. 1981; Sec. 53-20-414, MCA 1985; redes. 53-20-107 by Sec. 114, Ch. 609, L. 1987; amd. Sec. 4, Ch. 255, L. 1995.

Cross-References

Professional person defined, 53-20-102.

Certification of professional persons, 53-21-106.

53-20-108 through 53-20-110 reserved.

53-20-111. Repealed. Sec. 20, Ch. 255, L. 1995.

History: En. 38-1215 by Sec. 15, Ch. 468, L. 1975; amd. Sec. 4, Ch. 568, L. 1977; R.C.M. 1947, 38-1215; amd. Sec. 5, Ch. 381, L. 1991.

53-20-112. Procedural rights. (1) A respondent has all the rights accorded to a person subject to involuntary commitment proceedings under the laws of this state relating to involuntary commitment of a person who suffers from a mental disorder and who requires commitment, as provided in 53-21-115 through 53-21-118.

(2) In addition, the parents or guardian of a respondent have the right to:

(a) be present at any hearing held pursuant to this part;

(b) be represented by counsel in any hearing;

(c) offer evidence and cross-examine witnesses in any hearing; and

(d) have the respondent examined by a professional of their choice when a professional is reasonably available, unless the person chosen is objected to by the respondent or by a responsible person appointed by the court.

History: En. 38-1203 by Sec. 3, Ch. 468, L. 1975; R.C.M. 1947, 38-1203(1), (2); amd. Sec. 12, Ch. 38, L. 1979; amd. Sec. 6, Ch. 381, L. 1991; amd. Sec. 5, Ch. 255, L. 1995; amd. Sec. 13, Ch. 490, L. 1997.

53-20-113. Waiver of rights. (1) A respondent may waive the respondent's procedural rights provided that the waiver is knowingly and intentionally made.

(2) The right to counsel in a hearing held pursuant to 53-20-125 may not be waived.

(3) The right to habilitation provided for in this part may not be waived.

(4) A respondent may knowingly and intentionally waive the respondent's rights only with the concurrence of the respondent's counsel, if any, or, if the respondent has no counsel, the respondent's parents, guardian, or other responsible person appointed by the court.

History: En. 38-1203 by Sec. 3, Ch. 468, L. 1975; R.C.M. 1947, 38-1203(3) thru (5); amd. Sec. 7, Ch. 381, L. 1991; amd. Sec. 6, Ch. 255, L. 1995.

Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

Guardianship and conservatorship, Title 72, ch. 5.

53-20-114. Appointment of responsible person. (1) In a proceeding under this part, the court shall appoint a responsible person to protect the interests of the respondent if the court determines:

(a) that a conflict of interest may exist between the respondent and the respondent's parents or guardian;

(b) that the parents or guardian are unable to protect the interests of the respondent; or

(c) that the respondent has no parent or guardian.

(2) The responsible person may not be an employee of a residential facility.

(3) Only one person may be the responsible person within the meaning of this part.

(4) In appointing a responsible person, the court shall consider the preference of the respondent. The court may at any time, for good cause shown, change its designation of who is the responsible person.

(5) The appointment of the responsible person must terminate at the time of the resident's discharge from the residential facility. The appointment of the responsible person may not terminate during any period of conditional release from the facility.

History: En. 38-1202 by Sec. 2, Ch. 468, L. 1975; amd. Sec. 4, Ch. 37, L. 1977; amd. Sec. 1, Ch. 568, L. 1977; R.C.M. 1947, 38-1202(part); amd. Sec. 2, Ch. 485, L. 1979; amd. Sec. 7, Ch. 255, L. 1995.

53-20-115. Repealed. Sec. 25, Ch. 381, L. 1991.

History: En. 38-1212 by Sec. 12, Ch. 468, L. 1975; R.C.M. 1947, 38-1212.

53-20-116. Residential facility screening team member — testimony at hearing. In a hearing held pursuant to this part, a member of the residential facility screening team may be required to testify with regard to a determination made by the residential facility screening team.

History: En. 38-1213 by Sec. 13, Ch. 468, L. 1975; R.C.M. 1947, 38-1213; amd. Sec. 8, Ch. 381, L. 1991; amd. Sec. 8, Ch. 255, L. 1995.

53-20-117. Repealed. Sec. 25, Ch. 381, L. 1991.

History: En. 38-1214 by Sec. 14, Ch. 468, L. 1975; R.C.M. 1947, 38-1214.

53-20-118. Venue for hearing. (1) Hearings held pursuant to this part must be held in the district court for the district in which the respondent resides or in which the residential facility is located to which the respondent is or is to be committed.

(2) The cost of any hearing held pursuant to this part must be borne by the county where the respondent resides.

History: En. 38-1210 by Sec. 10, Ch. 468, L. 1975; R.C.M. 1947, 38-1210; amd. Sec. 9, Ch. 255, L. 1995.

Cross-References

Venue, Title 25, ch. 2.

53-20-119. Appeal procedure. Any order issued by a court after a hearing held pursuant to any provision of this part may be appealed to the Montana supreme court in the same manner as for civil appeals generally.

History: En. 38-1211 by Sec. 11, Ch. 468, L. 1975; R.C.M. 1947, 38-1211.

Cross-References

Appeals — how taken, Rule 4, M.R.App.P.
(see Title 25, ch. 21).

53-20-120. Repealed. Sec. 25, Ch. 381, L. 1991.

History: En. 38-1204 by Sec. 4, Ch. 468, L. 1975; R.C.M. 1947, 38-1204.

53-20-121. Petition for involuntary treatment — contents of. (1) A person who believes that there is a person who is seriously developmentally disabled and in need of commitment to a residential facility may request the county attorney to file a petition alleging that the person is seriously developmentally disabled and in need of commitment to a residential facility.

(2) The petition must contain:

(a) the name and address of the person requesting the petition and the person's interest in the case;

(b) the name and address of the respondent;

(c) the name and address of the parents or guardian of the respondent and of any other person believed to be legally responsible for the care, support, and maintenance of the respondent;

(d) the name and address of the respondent's next of kin, to the extent known;

(e) the name and address of any person who the county attorney believes might be willing and able to be appointed as a responsible person; and

(f) a statement of the rights of the respondent and the respondent's parents or guardian that must be in conspicuous print and identified by a suitable heading.

(3) A copy of the petition must be sent to the residential facility screening team.

History: En. 38-1205 by Sec. 5, Ch. 468, L. 1975; amd. Sec. 5, Ch. 37, L. 1977; R.C.M. 1947, 38-1205(1), (2); amd. Sec. 9, Ch. 381, L. 1991; amd. Sec. 10, Ch. 255, L. 1995.

53-20-122. Repealed. Sec. 25, Ch. 381, L. 1991.

History: En. 38-1205 by Sec. 5, Ch. 468, L. 1975; amd. Sec. 5, Ch. 37, L. 1977; R.C.M. 1947, 38-1205(3), (4).

53-20-123. Repealed. Sec. 25, Ch. 381, L. 1991.

History: En. 38-1206 by Sec. 6, Ch. 468, L. 1975; amd. Sec. 6, Ch. 37, L. 1977; R.C.M. 1947, 38-1206; amd. Sec. 3, Ch. 485, L. 1979; amd. Sec. 1, Ch. 262, L. 1991.

53-20-124. Repealed. Sec. 25, Ch. 381, L. 1991.

History: En. 38-1207 by Sec. 7, Ch. 468, L. 1975; R.C.M. 1947, 38-1207; amd. Sec. 2, Ch. 417, L. 1987.

53-20-125. Outcome of screening — recommendation for commitment to residential facility — hearing. (1) A person may be committed to a residential facility only if the person:

(a) is 18 years of age or older; and

(b) is determined to be seriously developmentally disabled and in need of commitment to a residential facility by the residential screening team, as provided in 53-20-133, and by a court, as provided in 53-20-129 or in this section.

(2) If as a result of the screening required by 53-20-133 the residential facility screening team concludes that the respondent who has been evaluated is seriously developmentally disabled and recommends that the respondent be committed to a residential facility for treatment and habilitation on an extended basis, the team shall file its written recommendation and report with the court. The report must include the factual basis for the recommendation and must describe any tests or evaluation devices that have been employed in evaluating the respondent.

(3) At the request of the respondent, the respondent's parents or guardian, or the responsible person, the court shall appoint counsel for the respondent. If the parents are indigent and if the parents request it or if a guardian is indigent and requests it, the court shall appoint counsel for the parents or guardian.

(4) Notice of the determination of the residential facility screening team must be mailed or delivered to:

(a) the respondent;

(b) the respondent's parents, guardian, or next of kin, if known;

(c) the responsible person;

(d) the respondent's advocate, if any;

(e) the county attorney;

(f) the residential facility;

(g) the attorney for the respondent, if any; and

(h) the attorney for the parents or guardian, if any.

(5) The respondent, the respondent's parents or guardian, the responsible person, the respondent's advocate, if any, or the attorney for any party may request that a hearing be held on the recommendation of the residential facility screening team.

(6) Notice of the hearing must be mailed or delivered to each of the parties listed in subsection (5).

(7) The hearing must be held before the court without jury. The rules of civil procedure apply.

(8) If the court finds that the respondent is seriously developmentally disabled and in need of commitment to a residential facility, it shall order the respondent committed to a residential facility for an extended course of treatment and habilitation. If the court finds that the respondent has a developmental disability but is not seriously developmentally disabled, it shall dismiss the petition and refer the respondent to the department of public health and human services to be considered for placement in community-based services according to 53-20-209. If the court finds that the respondent does not

have a developmental disability or is not in need of developmental disability services, it shall dismiss the petition.

(9) If none of the parties notified of the recommendation request a hearing, the court may issue an order for the commitment of the respondent to the residential facility for an extended period of treatment and habilitation or the court may initiate its own inquiry as to whether the order should be granted.

(10) The court may refuse to authorize commitment of a respondent to a residential facility for an extended period of treatment and habilitation if commitment is not in the best interests of the respondent.

(11) An order for commitment must be accompanied by findings of fact.

(12) A court order entered in a proceeding under this part must be provided to the residential facility screening team.

History: En. 38-1208 by Sec. 8, Ch. 468, L. 1975; amd. Sec. 7, Ch. 37, L. 1977; amd. Sec. 2, Ch. 568, L. 1977; R.C.M. 1947, 38-1208(1) thru (4); amd. Sec. 3, Ch. 417, L. 1987; amd. Sec. 10, Ch. 381, L. 1991; amd. Sec. 11, Ch. 255, L. 1995; amd. Sec. 470, Ch. 546, L. 1995.

53-20-126. Maximum period of commitment to residential facility. The court order approving the commitment must specify the maximum period of time for which the person is committed to the residential facility. The maximum period may not exceed 1 year.

History: En. 38-1209 by Sec. 9, Ch. 468, L. 1975; amd. Sec. 3, Ch. 568, L. 1977; R.C.M. 1947, 38-1209(1), (2); amd. Sec. 12, Ch. 255, L. 1995.

53-20-127. Transfer to another facility — release to community-based alternative — hearing. (1) If, at any time during the period for which a resident is committed to a residential facility for an extended period of habilitation and treatment, the qualified mental retardation professional responsible for the resident's habilitation decides that the resident no longer requires placement in a residential facility and that there exist sufficient community-based alternatives to provide adequate treatment and habilitation for the resident and adequate protection of the life and physical safety of the resident and others, the qualified mental retardation professional may release the resident to the community-based alternative.

(2) Notice of the proposed release must be sent at least 15 days prior to the date of release to:

(a) the resident;

(b) the resident's parents or guardian;

(c) the attorney who most recently represented the resident, if any;

(d) the responsible person appointed by the court, if any;

(e) the resident's advocate, if any; and

(f) the court that ordered the commitment.

(3) If a party that was notified objects to the release, the party may petition the court for a hearing to determine whether the release should be allowed. The hearing must comply with the procedures set forth in 53-20-125. The court may on its own initiative inquire concerning the propriety of the release.

(4) A resident may be transferred without the notice provided in subsection (2) to a hospital or other medical facility for necessary medical treatment or to a mental health facility for emergency treatment provided that the emergency transfer complies with the statutory requirements for emergency detention of the mentally ill. Within 24 hours of an emergency

medical or psychiatric transfer, notice must be given to the parents or guardian of the resident, the responsible person appointed by the court, if any, and the court.

(5) If a person is committed to a residential facility for an extended course of habilitation without a hearing and if subsequent to commitment one of the parties who could have requested a hearing learns that an alternative course of treatment is available that is more suitable to the needs of the resident, the party may request the qualified mental retardation professional responsible for the resident's habilitation to release the resident to the alternative if it is a community-based alternative. A release must comply with the requirements of subsections (1) through (4). If the qualified mental retardation professional in charge of the resident refuses to authorize the release, the party may petition the court for a hearing to determine whether the resident's commitment should be continued. The hearing must comply with the procedures set forth in 53-20-125.

History: (1)En. 38-1209 by Sec. 9, Ch. 468, L. 1975; amd. Sec. 3, Ch. 568, L. 1977; Sec. 38-1209, R.C.M. 1947; (2)En. 38-1208 by Sec. 8, Ch. 468, L. 1975; amd. Sec. 7, Ch. 37, L. 1977; amd. Sec. 2, Ch. 568, L. 1977; Sec. 38-1208, R.C.M. 1947; R.C.M. 1947, 38-1208(5), 38-1209(3); amd. Sec. 11, Ch. 381, L. 1991; amd. Sec. 13, Ch. 255, L. 1995.

53-20-128. Recommitment. (1) If the qualified mental retardation professional responsible for a resident's habilitation determines that the resident continues to be seriously developmentally disabled and in need of commitment to a residential facility beyond the term of the current commitment order, the qualified mental retardation professional shall request that a petition for recommitment be filed.

(2) A petition for recommitment must be filed with the district court before the end of the current period of commitment.

(3) The recommendation of the qualified mental retardation professional must be presented in a written report that includes a summary of the current habilitation plan for the resident.

(4) The resident must be screened in accordance with 53-20-133 by the residential facility screening team.

(5) Copies of the petition for recommitment and the report of the qualified mental retardation professional must be sent to:

(a) the court that issued the current order;
(b) the residential screening team;
(c) the resident;
(d) the resident's parents or guardian or next of kin, if any;
(e) the attorney who most recently represented the resident, if any;
(f) the responsible person appointed by the court, if any; and
(g) the resident's advocate, if any.

(6) If the residential facility screening team recommends that the resident be recommitted, the court may enter an order for recommitment without hearing unless a person notified as provided in subsection (5) requests that a hearing be held or the court determines that it would be in the best interest of the resident to hold a hearing.

(7) If the court sets a hearing, the court shall provide notice to all of the persons notified pursuant to subsection (5).

(8) A court may order a resident's recommitment to a residential facility if the court determines that the resident continues to be seriously developmentally disabled and in need of continued commitment to the residential facility. If the court finds that the resident is still in need of developmental disabilities services but does not require commitment to a residential facility or if all parties are willing for the resident to participate in a community-based program of habilitation, it shall refer the resident to the department of public health and human services to be considered for placement in community-based services according to 53-20-209. If the resident is placed in community-based services or if the need for developmental disabilities services no longer exists, the court shall dismiss the petition.

(9) The court may not order recommitment to a residential facility that does not have an individualized habilitation plan for the resident.

(10) At a hearing, the court may inquire concerning the suitability of continuing a resident's commitment to a residential facility.

History: En. 38-1209 by Sec. 9, Ch. 468, L. 1975; amd. Sec. 3, Ch. 568, L. 1977; R.C.M. 1947, 38-1209(4), (5); amd. Sec. 4, Ch. 417, L. 1987; amd. Sec. 12, Ch. 381, L. 1991; amd. Sec. 14, Ch. 255, L. 1995; amd. Sec. 471, Ch. 546, L. 1995.

53-20-129. Emergency admission and commitment. (1) A person believed to be seriously developmentally disabled may be admitted in a residential facility on an emergency basis when necessary to protect the person or others from death or serious bodily harm.

(2) An emergency admission to a residential facility may be initiated only by a developmental disabilities professional.

(3) An emergency admission may not proceed unless the residential facility and the department of public health and human services are given reasonable notice of the need for placement by the developmental disabilities professional responsible for emergency admission.

(4) A petition for emergency commitment must be filed on the next judicial day after an emergency admission by the county attorney of the county where the person resides.

(5) The residential facility screening team shall report back to the court on the seventh judicial day following the filing of the petition for emergency commitment.

(6) Once the report of the residential facility screening team is received by the court, continued placement in the residential facility may not continue without an order of the court for emergency commitment.

(7) A court may order an emergency commitment only when the court determines that the emergency commitment is necessary to protect the respondent or others from death or serious bodily harm.

(8) An order for emergency commitment may be entered without a hearing before the court, if the court finds that the record supports the order.

(9) An emergency commitment to a residential facility may not continue for longer than 30 days after placement in the residential facility unless a petition for an extended commitment to the residential facility has been filed before the court.

(10) The residential facility screening team may recommend that the respondent under a petition for emergency commitment be committed by court order to the residential facility on an extended basis.

History: En. 38-1216 by Sec. 16, Ch. 468, L. 1975; amd. Sec. 5, Ch. 568, L. 1977; R.C.M. 1947, 38-1216; amd. Sec. 13, Ch. 381, L. 1991; amd. Sec. 15, Ch. 255, L. 1995.

53-20-130. Patient transfers from mental health facilities. If a person is a patient in a mental health facility and the professional person, as defined in 53-21-102, in charge of the patient determines that the patient is suffering from a developmental disability rather than mental illness and should more properly be committed to a residential facility or an appropriate less restrictive alternative, the professional person shall commence proceedings to effect a commitment, consistent with the procedures set forth in this part for commitments generally.

History: En. 38-1233 by Sec. 33, Ch. 468, L. 1975; R.C.M. 1947, 38-1233; amd. Sec. 4, Ch. 485, L. 1979; amd. Sec. 16, Ch. 255, L. 1995.

53-20-131. Placement in nonstate facility. (1) Consistent with other provisions of this part, a person admitted to a residential facility under this part for a period of more than 30 days may be committed by the court to the custody of friends or next of kin residing outside the state or transferred to an out-of-state facility for the habilitation of persons who are persons with developmental disabilities if the out-of-state facility agrees to receive the person. Such a commitment or transfer may not be for a longer period of time than is permitted within Montana. If the person is indigent, the expense of supporting him in an out-of-state facility and the expense of transportation must be borne by the state of Montana.

(2) The transfer of persons admitted to a residential facility out of Montana under the provisions of this part or into Montana under the laws of another jurisdiction must be governed by the provisions of the Interstate Compact on Mental Health.

History: En. 38-1218 by Sec. 18, Ch. 468, L. 1975; R.C.M. 1947, 38-1218; amd. Sec. 6, Ch. 151, L. 1985; amd. Sec. 14, Ch. 381, L. 1991; amd. Sec. 21, Ch. 255, L. 1995.

53-20-132. Court-ordered placement in community-based services prohibited. Nothing in this part may be construed as authorizing the placement of and delivery of services to persons with developmental disabilities in community-based services by court order. Placement of persons in community-based services is governed by 53-20-209.

History: En. Sec. 1, Ch. 417, L. 1987; amd. Sec. 15, Ch. 381, L. 1991; amd. Sec. 21, Ch. 255, L. 1995.

53-20-133. Residential facility screening team — referral by court — membership — rules. (1) When the district court receives a petition for commitment to a residential facility under this part, the court, prior to proceeding, shall refer the respondent to the residential facility screening team for screening to determine whether placement and habilitation in a residential facility are appropriate for the respondent.

(2) A court may not commit a respondent to a residential facility under 53-20-125, 53-20-128, or 53-20-129 unless the residential facility screening team determines that placement and habilitation in a residential facility are appropriate for the respondent.

(3) The residential facility screening team may not determine that placement and habilitation in a residential facility are appropriate on an extended basis unless the residential facility screening team determines that the respondent is seriously developmentally disabled.

(4) The residential facility screening team shall provide the court and the county attorney with the social and placement information relied upon by the residential facility screening team in making its determination.

(5) For purposes of this part, the department of public health and human services shall adopt rules providing for the membership and terms of the members of the residential facility screening team and setting forth the criteria and procedures to govern the determinations made by the residential facility screening team.

History: En. Sec. 1, Ch. 381, L. 1991; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 17, Ch. 255, L. 1995; amd. Sec. 472, Ch. 546, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-20-134 through 53-20-140 reserved.

53-20-141. Denial of legal rights. (1) Unless specifically stated in an order by the court, a person admitted to a residential facility for an extended course of habilitation does not forfeit any legal right or suffer any legal disability by reason of the provisions of this part, except insofar as it may be necessary to detain the person for habilitation, evaluation, or care.

(2) Whenever a person is admitted to a residential facility for a period of more than 30 days for an extended course of habilitation, the court ordering the admission may make an order stating specifically any legal rights that are denied the respondent and any legal disabilities that are imposed on him. As part of its order, the court may appoint a person to act as conservator of the respondent's property. Any conservatorship created pursuant to this section terminates upon the conclusion of the admission if not sooner terminated by the court. A conservatorship or guardianship extending beyond the period of the admission may not be created except according to the procedures set forth under Montana law for the appointment of conservators and guardians generally.

(3) A person who has been admitted to a residential facility pursuant to this part must, upon the termination of the admission, be automatically restored to all of his civil and legal rights that may have been lost when he was admitted. However, this subsection does not affect any guardianship or conservatorship created independently of the admission proceedings according to the provisions of Montana law relating to the appointment of conservators and guardians generally. A person who leaves a residential facility following a period of evaluation and habilitation must be given a written statement setting forth the substance of this subsection.

History: En. 38-1217 by Sec. 17, Ch. 468, L. 1975; R.C.M. 1947, 38-1217; amd. Sec. 16, Ch. 381, L. 1991.

Cross-References

When person entitled to bring action is under a disability, 27-2-401.

Guardians of incapacitated persons, Title 72, ch. 5, part 3.

53-20-142. Rights while in residential facility. Persons admitted to a residential facility for a period of habilitation shall enjoy the following rights:

(1) Residents have a right to dignity, privacy, and humane care.

(2) Residents are entitled to send and receive sealed mail. Moreover, it is the duty of the facility to foster the exercise of this right by furnishing the necessary materials and assistance.

(3) Residents must have the same rights and access to private telephone communication as patients at any public hospital except to the extent that the individual treatment planning team or the qualified mental retardation professional responsible for formulation of a particular resident's habilitation plan writes an order imposing special restrictions and explains the reasons for the restrictions. The written order must be renewed monthly if any restrictions are to be continued.

(4) Residents have an unrestricted right to visitation except to the extent that the individual treatment planning team or the qualified mental retardation professional responsible for formulation of a particular resident's habilitation plan writes an order imposing special restrictions and explains the reasons for the restrictions. The written order must be renewed monthly if restrictions are to be continued.

(5) Residents have a right to receive suitable educational and habilitation services regardless of chronological age, degree of retardation, or accompanying disabilities.

(6) Each resident must have an adequate allowance of neat, clean, suitably fitting, and seasonable clothing. Except when a particular kind of clothing is required because of a particular condition, residents must have the opportunity to select from various types of neat, clean, and seasonable clothing. The clothing must be considered the resident's throughout the resident's stay in the facility. Clothing, both in amount and type, must make it possible for residents to go out of doors in inclement weather, to go for trips or visits appropriately dressed, and to make a normal appearance in the community. The facility shall make provision for the adequate and regular laundering of the residents' clothing.

(7) Each resident has the right to keep and use the resident's own personal possessions except insofar as the clothes or personal possessions may be determined by the individual treatment planning team or the qualified mental retardation professional to be dangerous either to the resident or to others.

(8) Each resident has a right to a humane physical environment within the residential facility. The facility must be designed to make a positive contribution to the efficient attainment of the habilitation goals of the resident. To accomplish this purpose:

(a) regular housekeeping and maintenance procedures that will ensure that the facility is maintained in a safe, clean, and attractive condition must be developed and implemented;

(b) pursuant to an established routine maintenance and repair program, the physical plant must be kept in a continuous state of good repair and operation so as to ensure the health, comfort, safety, and well-being of the residents and so as not to impede in any manner the habilitation programs of the residents;

(c) the physical facilities shall meet all fire and safety standards established by the state and locality. In addition, the facility shall meet the provisions of the life safety code of the national fire protection association that are applicable to it.

(d) there must be special facilities for nonambulatory residents to ensure their safety and comfort, including special fittings on toilets and wheelchairs. Appropriate provision must be made to permit nonambulatory residents to communicate their needs to staff.

(9) Residents have a right to receive prompt and adequate medical treatment for any physical or mental ailments or injuries or physical disabilities and for the prevention of any illness or disability. The medical treatment must meet standards of medical practice in the community. However, nothing in this subsection may be interpreted to impair other rights of a resident in regard to involuntary commitment for mental illness, use of psychotropic medication, use of hazardous, aversive, or experimental procedures, or the refusal of treatment.

(10) Corporal punishment is not permitted.

(11) The opportunity for religious worship must be accorded to each resident who desires worship. Provisions for religious worship must be made available to all residents on a nondiscriminatory basis. An individual may not be compelled to engage in any religious activities.

(12) Residents have a right to a nourishing, well-balanced diet. The diet for residents must provide at a minimum the recommended daily dietary allowance as developed by the national academy of sciences. Provisions must be made for special therapeutic diets and for substitutes at the request of the resident, the resident's parents, guardian, or next of kin, or the responsible person appointed by the court in accordance with the religious requirements of any resident's faith. Denial of a nutritionally adequate diet may not be used as punishment.

(13) Residents have a right to regular physical exercise several times a week. It is the duty of the facility to provide both indoor and outdoor facilities and equipment for exercise. Residents have a right to be outdoors daily in the absence of contrary medical considerations.

(14) Residents have a right, under appropriate supervision, to suitable opportunities for the interaction with members of the opposite sex except when the individual treatment planning team or the qualified mental retardation professional responsible for the formulation of a particular resident's habilitation plan writes an order to the contrary and explains the reasons for the order. The order must be renewed monthly if the restriction is to be continued.

History: En. 38-1221 by Sec. 21, Ch. 468, L. 1975; R.C.M. 1947, 38-1221; amd. Sec. 5, Ch. 485, L. 1979; amd. Sec. 17, Ch. 381, L. 1991; amd. Sec. 68, Ch. 472, L. 1997.

Cross-References

Institutions and assistance, Art. XII, sec. 3, Mont. Const.

53-20-143. Right not to be fingerprinted. No person admitted to or in a residential facility shall be fingerprinted unless required by other provisions of law.

History: En. 38-1219 by Sec. 19, Ch. 468, L. 1975; R.C.M. 1947, 38-1219.

53-20-144. Rights concerning photographs. (1) A person admitted to a residential facility may be photographed upon admission for identification, medical, habilitative, and administrative purposes of the facility. Such photographs shall be confidential and shall not be released by the facility except pursuant to court order.

(2) No other nonmedical or nonhabilitative photographs shall be taken or used without consent of the resident's parents or guardian or the responsible person appointed by the court.

History: **En. 38-1220 by Sec. 20, Ch. 468, L. 1975; R.C.M. 1947, 38-1220; amd. Sec. 6, Ch. 485, L. 1979.**

53-20-145. Right to be free from unnecessary or excessive medication. Residents have a right to be free from unnecessary or excessive medication. Medication may not be administered unless at the written order of a physician. The individual treatment planning team and the attending physician are responsible for all medication given or administered to a resident. The use of medication may not exceed standards of use that are advocated by the United States food and drug administration. Notation of each individual's medication must be kept in his medical records. A pharmacist or a registered nurse shall review monthly the record of each resident on medication for potential adverse reactions, allergies, interactions, contraindications, rationality, and laboratory test modifications and shall advise the physician of any problems. Medications must be reviewed quarterly by the attending or staff physician. At least monthly, an attending physician shall review the drug regimen of each patient on psychotropic medication. All prescriptions must be written with a termination date that may not exceed 90 days. Medication for newly admitted residents must be reviewed and reordered as necessary upon admission and then every 30 days for the first 90 days. Medications may not be used as punishment, for the convenience of staff, as a substitute for a habilitation program, or in quantities that interfere with the resident's treatment program. Nothing in this section may be interpreted to relieve a physician or other professional or medical staff person from any obligation to adequately monitor the medication of a resident, with due consideration to the nature of the medication, the purpose for which it is given, and the condition of the resident.

History: **En. 38-1226 by Sec. 26, Ch. 468, L. 1975; R.C.M. 1947, 38-1226; amd. Sec. 7, Ch. 485, L. 1979; amd. Sec. 18, Ch. 381, L. 1991.**

53-20-146. Right not to be subjected to certain treatment procedures. (1) Residents of a residential facility have a right not to be subjected to unusual or hazardous treatment procedures without the express and informed consent of the resident, if the resident is able to give consent, and of the resident's parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and legal counsel. Proposed procedures must first have been reviewed and approved by the mental disabilities board of visitors before consent is sought.

(2) Physical restraint may be employed only when absolutely necessary to protect the resident from injury or to prevent injury to others. Mechanical supports used to achieve proper body position and balance that are ordered by a physician are not considered a physical restraint. Restraint may not be employed as punishment, for the convenience of staff, or as a substitute for a habilitation program. Restraint may be applied only if alternative techniques have failed and only if the restraint imposes the least possible restriction consistent with its purpose. Use of restraints may be authorized by a physician, a developmental disabilities professional, or a qualified mental retardation professional. Orders for restraints must be in writing and may not be in force

for longer than 12 hours. Whenever physical restraint is ordered, suitable provision must be made for the comfort and physical needs of the resident restrained.

(3) Seclusion, defined as the placement of a resident alone in a locked room for nontherapeutic purposes, may not be employed. Legitimate "time out" procedures may be used under close and direct professional supervision as a technique in behavior-shaping programs.

(4) Behavior modification programs involving the use of noxious or aversive stimuli must be reviewed and approved by the mental disabilities board of visitors and may be conducted only with the express and informed consent of the affected resident, if the resident is able to give consent, and of the resident's parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and with legal counsel. These behavior modification programs may be conducted only under the supervision of and in the presence of a qualified mental retardation professional who has had proper training.

(5) A resident may not be subjected to a behavior modification program that attempts to extinguish socially appropriate behavior or to develop new behavior patterns when the behavior modifications serve only institutional convenience.

(6) Electric shock devices are considered a research technique for the purpose of this part. Electric shock devices may be used only in extraordinary circumstances to prevent self-mutilation leading to repeated and possibly permanent physical damage to the resident and only after alternative techniques have failed. The use of electric shock devices is subject to the conditions prescribed by this part for experimental research generally and may be used only under the direct and specific order of a physician and the superintendent of the residential facility.

History: En. 38-1227 by Sec. 27, Ch. 468, L. 1975; R.C.M. 1947, 38-1227; amd. Sec. 8, Ch. 485, L. 1979; amd. Sec. 19, Ch. 381, L. 1991; amd. Sec. 18, Ch. 255, L. 1995.

53-20-147. Right not to be subjected to experimental research. (1) Residents of a residential facility have a right not to be subjected to experimental research without the express and informed consent of the resident, if the resident is able to give consent, and of the resident's parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and with legal counsel.

(2) The proposed research must have been reviewed and approved by the mental disabilities board of visitors before consent may be sought. Prior to approval, the board shall determine that the research complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health and human services for projects supported by that agency.

History: En. 38-1228 by Sec. 28, Ch. 468, L. 1975; R.C.M. 1947, 38-1228; amd. Sec. 71, Ch. 10, L. 1993.

53-20-148. Right to habilitation. (1) Persons admitted to residential facilities have a right to habilitation, including medical treatment, education, and care suited to their needs, regardless of age, degree of retardation, or disabling condition. Each resident has a right to a habilitation program that will maximize the resident's human abilities and enhance the resident's ability to cope with the environment. Every residential facility shall recognize that each resident, regardless of ability or status, is entitled to develop and realize the resident's fullest potential. The facility shall implement the principle of normalization so that each resident may live as normally as possible.

(2) Residents have a right to the least restrictive conditions necessary to achieve the purposes of habilitation. To this end, the facility shall make every attempt to move residents from:

(a) more to less structured living;

(b) larger to smaller facilities;

(c) larger to smaller living units;

(d) group to individual residences;

(e) segregated from the community to integrated into the community living;

(f) dependent to independent living.

(3) Within 30 days of admission to a residential facility, each resident must have an evaluation by appropriate specialists for programming purposes.

(4) Each resident must have an individualized habilitation plan formulated by an individual treatment planning team. This plan must be implemented as soon as possible, but no later than 30 days after the resident's admission to the facility. An interim program of habilitation, based on the preadmission evaluation conducted pursuant to this part, must commence promptly upon the resident's admission. Each individualized habilitation plan must contain:

(a) a statement of the nature of the specific limitations and the needs of the resident;

(b) a description of intermediate and long-range habilitation goals, with a projected timetable for their attainment;

(c) a statement of and an explanation for the plan of habilitation for achieving these intermediate and long-range goals;

(d) a statement of the least restrictive setting for habilitation necessary to achieve the habilitation goals of the resident;

(e) a specification of the professionals and other staff members who are responsible for the particular resident's attaining these habilitation goals;

(f) criteria for release to less restrictive settings for habilitation, based on the resident's needs, including criteria for discharge and a projected date for discharge.

(5) As part of the habilitation plan, each resident must have an individualized postinstitutionalization plan that includes an identification of services needed to make a satisfactory community placement possible. This plan must be developed by the individual treatment planning team that shall begin preparation of the plan upon the resident's admission to the facility and shall complete the plan as soon as practicable. The parents or guardian or next of kin of the resident, the responsible person appointed by the court, if any, and the resident, if able to give informed consent, must be consulted in the development of the plan and must be informed of the content of the plan.

(6) In the interests of continuity of care, one qualified mental retardation professional shall whenever possible be responsible for supervising the implementation of the habilitation plan, integrating the various aspects of the

habilitation program, and recording the resident's progress as measured by objective indicators. The qualified mental retardation professional is also responsible for ensuring that the resident is released when appropriate to a less restrictive habilitation setting.

(7) The habilitation plan must be reviewed monthly by the qualified mental retardation professional responsible for supervising the implementation of the plan and must be modified if necessary. In addition, 6 months after admission and at least annually thereafter, each resident must receive a comprehensive psychological, social, habilitative, and medical diagnosis and evaluation and the resident's habilitation plan must be reviewed and revised accordingly by the individual treatment planning team. A habilitation plan must be reviewed monthly.

(8) Each resident placed in the community must receive transitional habilitation assistance.

(9) The superintendent of the residential facility, or the superintendent's designee, shall report in writing to the parents or guardian of the resident or the responsible person at least every 6 months on the resident's habilitation and medical condition. The report must also state any appropriate habilitation program that has not been afforded to the resident because of inadequate habilitation resources.

(10) Each resident, the parents or guardian of each resident, and the responsible person appointed by the court must promptly upon the resident's admission receive a written copy of and be orally informed of all the above standards for adequate habilitation, the rights accorded by 53-20-142, and other information concerning the care and habilitation of the resident that may be available to assist them in understanding the situation of the resident and the rights of the resident in the facility.

History: En. 38-1222 by Sec. 22, Ch. 468, L. 1975; amd. Sec. 8, Ch. 37, L. 1977; R.C.M. 1947, 38-1222; amd. Sec. 9, Ch. 485, L. 1979; amd. Sec. 20, Ch. 381, L. 1991; amd. Sec. 69, Ch. 472, L. 1997.

53-20-149 through 53-20-160 reserved.

53-20-161. Maintenance of records. (1) Complete records for each resident must be maintained and must be readily available to persons who are directly involved with the particular resident and to the mental disabilities board of visitors. All information contained in a resident's records must be considered privileged and confidential. The parents or guardian, the responsible person appointed by the court, and any person properly authorized in writing by the resident, if the resident is capable of giving informed consent, or by the resident's parents or guardian or the responsible person must be permitted access to the resident's records. Information may not be released from the records of a resident or former resident of the residential facility unless the release of the information has been properly authorized in writing by:

(a) the court;

(b) the resident or former resident if the resident or former resident is over the age of majority and is capable of giving informed consent;

(c) the parents or guardian in charge of a resident under the age of 12;

(d) the parents or guardian in charge of a resident over the age of 12 but under the age of majority and the resident if the resident is capable of giving informed consent;

(e) the guardian of a resident over the age of majority who is incapable of giving informed consent;

(f) the superintendent of the residential facility or the superintendent's designee as custodian of a resident over the age of majority who is incapable of giving informed consent and for whom no legal guardian has been appointed;

(g) the superintendent of the residential facility or the superintendent's designee as custodian of a resident under the age of majority for whom there is no parent or legal guardian; or

(h) the superintendent of the residential facility or the superintendent's designee as custodian of a resident of that facility whenever release is required by federal or state law or department of public health and human services rules.

(2) Information may not be released by a superintendent or the superintendent's designee as set forth in subsection (1)(f), (1)(g), or (1)(h) less than 15 days after sending notice of the proposed release of information to the resident, the resident's parents or guardian, the attorney who most recently represented the resident, if any, the responsible person appointed by the court, if any, the resident's advocate, if any, and the court that ordered the admission. If any of the parties so notified objects to the release of information, they may petition the court for a hearing to determine whether the release of information should be allowed. Information may not be released pursuant to subsection (1)(f), (1)(g), or (1)(h) unless it is released to further some legitimate need of the resident or to accomplish a legitimate purpose of the facility that is not inconsistent with the needs and rights of the resident. Information may not be released pursuant to subsection (1)(f), (1)(g), or (1)(h) except in accordance with written policies consistent with the requirements of this part adopted by the facility. Persons receiving notice of a proposed release of information must also receive a copy of the written policy of the facility governing release of information.

(3) These records must include:

(a) identification data, including the resident's legal status;

(b) the resident's history, including but not limited to:

(i) family data, educational background, and employment record;

(ii) prior medical history, both physical and mental, including prior institutionalization;

(c) the resident's grievances, if any;

(d) an inventory of the resident's life skills, including mode of communication;

(e) a record of each physical examination that describes the results of the examination;

(f) a copy of the individual habilitation plan and any modifications to the plan and an appropriate summary to guide and assist the resident care workers in implementing the resident's habilitation plan;

(g) the findings made in monthly reviews of the habilitation plan, including an analysis of the successes and failures of the habilitation program and whatever modifications are necessary;

(h) a copy of the postinstitutionalization plan that includes a statement of services needed in the community and any modifications to the postinstitutionalization plan and a summary of the steps that have been taken to implement that plan;

(i) a medication history and status;

(j) a summary of each significant contact by a qualified mental retardation professional with a resident;

(k) a summary of the resident's response to the resident's habilitation plan, prepared by a qualified mental retardation professional involved in the resident's habilitation and recorded at least monthly. Wherever possible, the response must be scientifically documented.

(l) a monthly summary of the extent and nature of the resident's work activities and the effect of the activity upon the resident's progress in the habilitation plan;

(m) a signed order by a qualified mental retardation professional or physician for any physical restraints;

(n) a description of any extraordinary incident or accident in the facility involving the resident, to be entered by a staff member noting personal knowledge of the incident or accident or other source of information, including any reports of investigations of the resident's mistreatment;

(o) a summary of family visits and contacts;

(p) a summary of attendance and leaves from the facility;

(q) a record of any seizures; illnesses; injuries; treatments of seizures, illnesses, and injuries; and immunizations.

History: En. 38-1223 by Sec. 23, Ch. 468, L. 1975; R.C.M. 1947, 38-1223; amd. Sec. 10, Ch. 485, L. 1979; amd. Sec. 21, Ch. 381, L. 1991; amd. Sec. 19, Ch. 255, L. 1995; amd. Sec. 473, Ch. 546, L. 1995.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Public records, Title 2, ch. 6.

Uniform Health Care Information Act, Title 50, ch. 16, part 5.

53-20-162. Training for resident care workers. All resident care workers who have not had prior clinical experience in a residential facility for habilitation of persons with developmental disabilities must be given suitable orientation training. Staff members on all levels must be given suitable, regularly scheduled inservice training. Each resident care worker shall receive supervision that emphasizes the protection of residents and their rights.

History: En. 38-1224 by Sec. 24, Ch. 468, L. 1975; R.C.M. 1947, 38-1224; amd. Sec. 22, Ch. 381, L. 1991; amd. Sec. 21, Ch. 255, L. 1995.

53-20-163. Abuse of residents prohibited. (1) Every residential facility shall prohibit mistreatment, neglect, or abuse in any form of any resident. Alleged violations must be reported immediately to the superintendent of the facility, and there must be a written record that:

(a) each alleged violation has been thoroughly investigated and findings stated; and

(b) the investigation into the alleged violation was initiated within 24 hours of the report of the incident and the results were reported to the director of the department of public health and human services.

(2) The reports must also be made to the mental disabilities board of visitors monthly. Each facility shall cause a written statement of this policy to be posted in each cottage and building and circulated to all staff members.

History: En. 38-1225 by Sec. 25, Ch. 468, L. 1975; R.C.M. 1947, 38-1225; amd. Sec. 23, Ch. 381, L. 1991; amd. Sec. 1, Ch. 27, L. 1993; amd. Sec. 474, Ch. 546, L. 1995.

53-20-164. Resident labor. The following rules govern resident labor:

(1) A resident may not be required to perform labor that involves the operation and maintenance of the facility or for which the facility is under contract with an outside organization. Privileges or release from the facility may not be conditioned upon the performance of labor covered by this provision. Residents may voluntarily engage in such labor if the labor is compensated in accordance with the minimum wage laws of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, as amended.

(2) A resident may not be involved in the care (feeding, clothing, bathing), training, or supervision of other residents unless he:

(a) has volunteered;

(b) has been specifically trained in the necessary skills;

(c) has the humane judgment required for such activities;

(d) is adequately supervised; and

(e) is reimbursed in accordance with the minimum wage laws of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, as amended.

(3) Residents may be required to perform vocational training tasks that do not involve the operation and maintenance of the facility, subject to a presumption that an assignment of longer than 3 months to any task is not a training task, provided the specific task or any change in task assignment is:

(a) an integrated part of the resident's habilitation plan and approved as a habilitation activity by the qualified mental retardation professional and the individual treatment planning team responsible for supervising the resident's habilitation; and

(b) supervised by a staff member to oversee the habilitation aspects of the activity.

(4) Residents may voluntarily engage in habilitative labor at nonprogram hours for which the facility would otherwise have to pay an employee, provided the specific labor or any change in labor is:

(a) an integrated part of the resident's habilitation plan and approved as a habilitation activity by the qualified mental retardation professional and the individual treatment planning team responsible for supervising the resident's habilitation;

(b) supervised by a staff member to oversee the habilitation aspects of the activity; and

(c) compensated in accordance with the minimum wage laws of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, as amended.

(5) If a resident performs habilitative labor that involves the operation and maintenance of a facility but due to physical or mental disability is unable to perform the labor as efficiently as a person not so physically or mentally disabled, then the resident may be compensated at a rate that bears the same approximate relation to the statutory minimum wage as his ability to perform that particular job bears to the ability of a person not so afflicted.

(6) Residents may be required to perform tasks of a personal housekeeping nature, such as the making of one's own bed.

(7) Deductions or payments for care and other charges may not deprive a resident of a reasonable amount of the compensation received pursuant to this section for personal and incidental purchases and expenses.

(8) Staffing must be sufficient so that the facility is not dependent upon the use of residents or volunteers for the care, maintenance, or habilitation of other residents or for income-producing services. The facility shall formulate a written policy to protect the residents from exploitation when they are engaged in productive work.

History: En. 38-1229 by Sec. 29, Ch. 468, L. 1975; R.C.M. 1947, 38-1229; amd. Sec. 11, Ch. 485, L. 1979; amd. Sec. 24, Ch. 381, L. 1991.

53-20-165. Clothing for residents discharged or conditionally released. A resident may not be discharged or conditionally released from a residential facility for persons with developmental disabilities without suitable reasonable clothing that will allow the resident to make a normal appearance in the community.

History: En. Sec. 12, Ch. 485, L. 1979; amd. Sec. 21, Ch. 255, L. 1995.

Cross-References

Clothing purchases exempt from general purchasing requirements, 18-4-133.

Part 2

Community-Based Services

Part Cross-References

Regular classes preferred — obligation to establish special education program, 20-7-411.

53-20-201. Short title. This part shall be known and may be cited as the "Montana Developmental Disabilities Services and Facilities Act of 1974".

History: En. 80-2611 by Sec. 1, Ch. 325, L. 1974; redes. 71-2401 by Sec. 10, Ch. 239, L. 1975; R.C.M. 1947, 71-2401.

53-20-202. Definitions. As used in this part, the following definitions apply:

(1) "Comprehensive developmental disability system" means a system of services, including but not limited to the following basic services, with the intention of providing alternatives to institutionalization:

(a) evaluation services;
(b) diagnostic services;
(c) treatment services;
(d) day-care services;
(e) training services;
(f) education services;
(g) employment services;
(h) recreation services;
(i) personal-care services;
(j) domiciliary-care services;
(k) special living arrangements services;
(l) counseling services;

(m) information and referral services;
(n) follow-along services;
(o) protective and other social and sociolegal services; and
(p) transportation services.

(2) "Department" means the department of public health and human services.

(3) "Developmental disabilities" means disabilities attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals if the disability originated before the person attained age 18, has continued or can be expected to continue indefinitely, and results in the person having a substantial disability.

(4) "Developmental disabilities facility" means any service or group of services offering care to persons with developmental disabilities on an inpatient, outpatient, residential, clinical, or other programmatic basis.

(5) "Planning and advisory council" or "council" means the developmental disabilities planning and advisory council created in 2-15-2204.

History: En. 80-2612 by Sec. 2, Ch. 325, L. 1974; R.C.M. 1947, 80-2612; amd. and redes. 71-2402 by Sec. 1, Ch. 239, L. 1975; amd. Sec. 1, Ch. 559, L. 1977; R.C.M. 1947, 71-2402; amd. Sec. 113, Ch. 370, L. 1987; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 475, Ch. 546, L. 1995; amd. Sec. 70, Ch. 472, L. 1997.

53-20-203. Responsibilities of department. The department shall:

(1) take cognizance of matters affecting the citizens of the state who are persons with developmental disabilities;

(2) initiate a preventive developmental disabilities program that must include but not be limited to the implementation of developmental disabilities care, treatment, prevention, and research as can best be accomplished by community-centered services. Every means must be used to initiate and operate the service program in cooperation with local agencies under the provisions of 53-20-205.

(3) collect and disseminate information relating to developmental disabilities;

(4) prepare, with the assistance of the planning and advisory council, an annual comprehensive plan for the initiation and maintenance of developmental disabilities services in the state. The services must include but not be limited to community comprehensive developmental disabilities services as referred to in 53-20-202.

(5) provide by rule for the evaluation of persons who apply for services or persons admitted into a program at a developmental disability facility;

(6) receive from agencies of the government of the United States and other agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions to initiate and maintain developmental disabilities services within the state;

(7) require that habilitation plans be developed, implemented, and continuously maintained for all persons with developmental disabilities who are served through a community-based program funded by the state; and

(8) use funds available for cases in which special medical or material assistance is necessary to rehabilitate children with developmental disabilities or children with physical disabilities if the assistance is not otherwise provided for by law.

History: En. 80-2613 by Sec. 3, Ch. 325, L. 1974; R.C.M. 1947, 80-2613; amd. and redes. 71-2403 by Sec. 2, Ch. 239, L. 1975; amd. Sec. 2, Ch. 559, L. 1977; R.C.M. 1947, 71-2403; amd. Sec. 1, Ch. 414, L. 1979; amd. Sec. 1, Ch. 426, L. 1987; amd. Sec. 93, Ch. 609, L. 1987; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 13, Ch. 171, L. 1997; amd. Sec. 71, Ch. 472, L. 1997.

53-20-204. Rules. (1) The department may adopt rules necessary for the proper administration of this part.

(2) The department shall adopt rules in cooperation with the board of nursing under which a properly trained staff member of a facility providing services to persons with developmental disabilities under this part may assist and supervise a client of the facility in taking medication if the medication is usually self-administered and if a physician has prescribed the assistance.

History: En. 80-2614 by Sec. 4, Ch. 325, L. 1974; R.C.M. 1947, 80-2614; amd. and redes. 71-2404 by Sec. 3, Ch. 239, L. 1975; amd. Sec. 41, Ch. 37, L. 1977; amd. Sec. 3, Ch. 559, L. 1977; R.C.M. 1947, 71-2404(1), (4); amd. Sec. 21, Ch. 255, L. 1995.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Right to be free from unnecessary or excessive medication, 53-20-145.

53-20-205. Community services. (1) The department may establish and administer community comprehensive services, programs, clinics, or other facilities throughout the state for the purpose of aiding in the prevention, diagnosis, amelioration, or treatment of developmental disabilities. Programs, clinics, or other services may be provided directly by state agencies or indirectly through contract or cooperative arrangements with other agencies of government, regional or local, private or public agencies, private professional persons, or accredited health or long-term care facilities.

(2) The department may contract for programs for developmental disabilities services. Contracts entered into by the department must contain specific conditions for performance by the contractor. The department shall set minimum standards for programs and establish appropriate qualifications for persons employed in such programs.

(3) All developmental disabilities facilities and services must comply with existing federal guidelines and with requirements that will enable the services and facilities to qualify for available aid funds. However, this section does not require facilities serving persons with developmental disabilities to meet the same or equal standards as licensed medical facilities unless the developmental disabilities facility is providing professional or skilled medical care.

(4) Comprehensive services, programs, clinics, or other facilities established or provided by the department under this part must conform as nearly as possible to the plans of the advisory council created under 2-15-2204.

(5) The department may promote scientific and medical research investigations relative to the incidence, cause, prevention, and care of persons with developmental disabilities.

History: (1), (4)En. 80-2615 by Sec. 5, Ch. 325, L. 1974; R.C.M. 1947, 80-2615; amd. and redes. 71-2405 by Sec. 4, Ch. 239, L. 1975; amd. Sec. 42, Ch. 37, L. 1977; Sec. 71-2405,

R.C.M. 1947; (2), (3)En. 80-2614 by Sec. 4, Ch. 325, L. 1974; R.C.M. 1947, 80-2614; amd. and redes. 71-2404 by Sec. 3, Ch. 239, L. 1975; amd. Sec. 41, Ch. 37, L. 1977; amd. Sec. 3, Ch. 559, L. 1977; Sec. 71-2404, R.C.M. 1947; R.C.M. 1947, 71-2404(2), (3), 71-2405; amd. Sec. 13, Ch. 38, L. 1979; (5)En. Sec. 2, Ch. 414, L. 1979; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 14, Ch. 171, L. 1997.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Public contracts generally, Title 18, ch. 1.

One-step licensing — inspection by other Department, Title 50, ch. 8.

53-20-206. Planning and advisory council. (1) The planning and advisory council may elect from among its members the officers necessary for the proper management of the council.

(2) The council may adopt rules governing its own organization and procedures.

(3) A majority of the members of the council constitutes a quorum for the transaction of business.

(4) The council may employ and fix the compensation and duties of necessary staff.

(5) A council member, unless he is a full-time salaried officer or employee of this state or any of the political subdivisions of this state, is entitled to be paid in an amount to be determined by the council, not to exceed $25, for each day in which he is actually and necessarily engaged in the performance of council duties. A council member is also entitled to be reimbursed for travel expenses incurred while in the performance of council duties as provided for in 2-18-501 through 2-18-503. Members who are full-time salaried officers or employees of this state or any political subdivisions of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

(6) The council shall:

(a) advise the department, other state agencies, councils, local governments, and private organizations on programs for services to persons with developmental disabilities;

(b) develop a plan for a statewide system of community-based services for persons with developmental disabilities; and

(c) serve in any capacity required by federal law for the administration of federal programs for services to persons with developmental disabilities.

History: En. 71-2406 by Sec. 5, Ch. 239, L. 1975; amd. Sec. 4, Ch. 559, L. 1977; R.C.M. 1947, 71-2406(4) thru (9); amd. Sec. 21, Ch. 255, L. 1995.

53-20-207. Repealed. Sec. 16, Ch. 171, L. 1997.

History: En. 71-2407 by Sec. 6, Ch. 239, L. 1975; amd. Sec. 5, Ch. 559, L. 1977; R.C.M. 1947, 71-2407; amd. Sec. 3, Ch. 414, L. 1979; amd. Sec. 21, Ch. 255, L. 1995.

53-20-208. Contributions of counties and municipalities. (1) The boards of county commissioners of the several counties and the governing bodies of municipalities of this state may, in their discretion, contribute to any developmental disabilities facility approved by the department, without regard to whether the facility is within or outside of their respective jurisdictions. Subject to 15-10-420, the boards of county commissioners of the counties may levy a tax up to but not to exceed 1 mill on each dollar of taxable property within the county. The tax is in addition to all other county tax levies. All proceeds of the tax, if levied, must be used for the sole purpose of support of developmental disabilities services.

(2) For the purpose of carrying out the provisions of this section, boards of county commissioners and governing bodies of municipalities may appropriate out of the general fund of their respective counties or municipalities.

History: En. 80-2619 by Sec. 9, Ch. 325, L. 1974; Sec. 80-2619, R.C.M. 1947; amd. and redes. 71-2408 by Sec. 7, Ch. 239, L. 1975; R.C.M. 1947, 71-2408; amd. Sec. 131, Ch. 584, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 584 at beginning of second sentence in (1) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Cross-References

County taxation, Title 7, ch. 6, part 25.

Incorporation of property tax levy into county all-purpose levy, 7-6-2523.

53-20-209. Eligibility for services. (1) Any person suspected of a developmental disability shall be eligible for an evaluation to determine whether the person is a person with developmental disabilities.

(2) If the department determines through a screening process that a person with developmental disabilities is in need of available services and those services can be provided to him, the department may provide services available under this part and Title 53, chapter 20, part 3.

History: En. 80-2621 by Sec. 11, Ch. 325, L. 1974; Sec. 80-2621, R.C.M. 1947; redes. 71-2409 by Sec. 10, Ch. 239, L. 1975; R.C.M. 1947, 71-2409; amd. Sec. 1, Ch. 245, L. 1985; amd. Sec. 21, Ch. 255, L. 1995.

53-20-210. Application to reservation Indians. For purposes of this part, Indian people living within federal Indian reservations shall be entitled to all services provided for under this part.

History: En. 80-2622 by Sec. 12, Ch. 325, L. 1974; Sec. 80-2622, R.C.M. 1947; redes. 71-2410 by Sec. 10, Ch. 239, L. 1975; R.C.M. 1947, 71-2410.

Cross-References

Jurisdiction on Indian lands, Title 2, ch. 1, part 3.

53-20-211. No effect on existing facilities. Nothing in this part shall be construed to prevent the continuation of existing developmental disabilities facilities or services in the state.

History: En. 80-2623 by Sec. 13, Ch. 325, L. 1974; Sec. 80-2623, R.C.M. 1947; redes. 71-2411 by Sec. 10, Ch. 239, L. 1975; R.C.M. 1947, 71-2411.

53-20-212. Discrimination forbidden. The services provided under this part shall be made available without discrimination on the basis of race, color, creed, religion, or ability to pay and shall comply with the provisions of Title VI of the federal Civil Rights Act of 1964.

History: En. 80-2624 by Sec. 14, Ch. 325, L. 1974; Sec. 80-2624, R.C.M. 1947; redes. 71-2412 by Sec. 10, Ch. 239, L. 1975; amd. Sec. 16, Ch. 38, L. 1977; R.C.M. 1947, 71-2412.

Cross-References

Individual dignity, Art. II, sec. 4, Mont. Const.

Illegal discrimination, Title 49, ch. 2.

53-20-213. Departments to cooperate. The department of public health and human services and the office of superintendent of public instruction shall cooperate on all aspects of each agency's respective programs for persons with developmental disabilities.

History: En. 71-2414 by Sec. 8, Ch. 239, L. 1975; amd. Sec. 6, Ch. 559, L. 1977; R.C.M. 1947, 71-2414(1); amd. Sec. 94, Ch. 609, L. 1987; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 163, Ch. 418, L. 1995; amd. Sec. 476, Ch. 546, L. 1995.

53-20-214. Certain transfers of funds authorized. Funds appropriated to the Montana state hospital or Montana developmental center may be transferred by budget amendment as provided in appropriation acts and with the approval of the governor to the department of public health and human services for comprehensive developmental disability systems if residents of any of those institutions are transferred to a comprehensive developmental disability system resulting in less expenditures at that institution than allowed by legislative appropriation.

History: En. 71-2414 by Sec. 8, Ch. 239, L. 1975; amd. Sec. 6, Ch. 559, L. 1977; R.C.M. 1947, 71-2414(2); amd. Sec. 17, Ch. 361, L. 1983; amd. Sec. 7, Ch. 151, L. 1985; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 477, Ch. 546, L. 1995.

Cross-References

Budget amendments, 5-12-401.

Limit on expenditures, 17-8-103.

Part 3

Community Homes

53-20-301. Purpose. The legislature, in recognition of the wide and varied needs of persons with developmental disabilities and of the desirability of meeting these needs on a community level to the fullest extent possible and in order to reduce the need for care in existing state institutions, establishes by this part a community home program for persons with developmental disabilities to provide facilities and services for the training and treatment of persons with developmental disabilities in family-oriented residences and establishes a program to provide such homes through local nonprofit corporations.

History: En. Sec. 1, Ch. 373, L. 1973; amd. Sec. 1, Ch. 149, L. 1974; amd. Sec. 1, Ch. 385, L. 1975; R.C.M. 1947, 71-2001; amd. Sec. 21, Ch. 255, L. 1995.

53-20-302. Definition of community home — limitation on number of residents. A community home for persons with developmental disabilities is a family-oriented residence or home designed to provide facilities for two to eight persons with developmental disabilities, established as an alternative to existing state institutions. The number of persons with developmental disabilities may not exceed eight in a community home, except that the department of public health and human services may grant written approval for more than eight but not more than twelve persons.

History: En. Sec. 2, Ch. 373, L. 1973; R.C.M. 1947, 71-2002; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 478, Ch. 546, L. 1995.

53-20-303. Parties authorized to establish and operate community homes. (1) Nonprofit corporations or associations may be formed or organized in any community for the purposes of establishing a community home or homes for persons with developmental disabilities under this part and to receive services, facilities, and funds as the department of public health and human services and other governmental units may be authorized by law to provide.

(2) The department may also establish a community home or homes for persons with developmental disabilities under this part and receive services, facilities, and funds as the department and other governmental units may be authorized by law to provide.

History: **En. Sec. 3, Ch. 373, L. 1973; amd. Sec. 2, Ch. 149, L. 1974; R.C.M. 1947, 71-2003; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 479, Ch. 546, L. 1995.**

53-20-304. Department contracts with nonprofit corporations — governmental units providing for community homes. (1) The department of public health and human services may contract with nonprofit corporations or associations to provide facilities and services for persons with developmental disabilities in community homes for persons with developmental disabilities and is authorized to expend money appropriated or available for that purpose.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning, are authorized to provide, at their own expense, funds, materials, facilities, and services for community homes for persons with developmental disabilities.

History: **En. Sec. 4, Ch. 373, L. 1973; amd. Sec. 3, Ch. 149, L. 1974; amd. Sec. 2, Ch. 385, L. 1975; R.C.M. 1947, 71-2004; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 480, Ch. 546, L. 1995.**

Cross-References

Public contracts generally, Title 18, ch. 1.

53-20-305. Local control of community homes — departmental licensing, administration, operation, health and safety standards. (1) Community homes for persons with developmental disabilities may be under local control, and the nonprofit corporations or associations operating community homes are authorized to establish homes and programs they believe in the best interest of their homes.

(2) (a) A community home for persons with developmental disabilities must be licensed annually by the department of public health and human services.

(b) One temporary license may be issued for no longer than 60 days if there are unavoidable delays in the certification process.

(3) The department of public health and human services for the purpose of licensing shall adopt standards and rules concerning the administration, operation, health, and safety of community homes for persons with developmental disabilities.

History: **En. Sec. 5, Ch. 373, L. 1973; amd. Sec. 4, Ch. 149, L. 1974; R.C.M. 1947, 71-2005; amd. Sec. 1, Ch. 271, L. 1981; amd. Sec. 95, Ch. 609, L. 1987; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 164, Ch. 418, L. 1995; amd. Sec. 481, Ch. 546, L. 1995.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

One-step licensing — inspection by other Department, Title 50, ch. 8.

53-20-306. Federal aid. The department of public health and human services may apply for and receive federal-aid money or other assistance that is available for programs in the nature of the program created by this part.

History: **En. Sec. 6, Ch. 373, L. 1973; amd. Sec. 5, Ch. 149, L. 1974; R.C.M. 1947, 71-2006; amd. Sec. 482, Ch. 546, L. 1995.**

53-20-307. Health and safety standards for licensing. (1) (a) After initial certification by the state fire prevention and investigation program of the department of justice, community homes must be certified annually for fire and life safety by the department of justice.

(b) The department of justice shall notify the department of public health and human services when a community home has been certified.

(2) (a) Local health officers shall certify community homes for compliance with health and safety standards. If for any reason the local authority cannot complete the certification in a timely manner, the department of public health and human services is authorized to make the determination on certification.

(b) A reasonable fee may be charged to authorized parties as defined in 53-20-303 for the health and safety certification.

History: En. Sec. 7, Ch. 373, L. 1973; R.C.M. 1947, 71-2007; amd. Sec. 2, Ch. 271, L. 1981; amd. Sec. 96, Ch. 609, L. 1987; amd. Sec. 1, Ch. 706, L. 1991; amd. Sec. 165, Ch. 418, L. 1995; amd. Sec. 483, Ch. 546, L. 1995.

Cross-References

Powers and duties of local boards of health, 50-2-116.

State fire prevention and investigation program, Title 50, ch. 3, part 1.

Part 4

Protective Services (Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered and Repealed:

53-20-401. Renumbered 52-4-101.

53-20-402. Renumbered 52-4-102.

53-20-403. Renumbered 52-4-103.

53-20-404. Repealed. Sec. 112, Ch. 609, L. 1987.

53-20-405. Renumbered 52-4-104.

53-20-406. Renumbered 52-4-105.

53-20-407. Repealed. Sec. 112, Ch. 609, L. 1987.

53-20-408. Renumbered 52-4-106.

53-20-409. Renumbered 52-4-107.

53-20-410. Renumbered 52-4-108.

53-20-411. Repealed. Sec. 112, Ch. 609, L. 1987.

53-20-412. Repealed. Sec. 112, Ch. 609, L. 1987.

53-20-413. Renumbered 52-4-110.

53-20-414. Renumbered 53-20-107.

Histories of Repealed Sections:

53-20-404. En. Sec. 4, Ch. 508, L. 1973; R.C.M. 1947, 71-1904; amd. Sec. 3, Ch. 343, L. 1981.

53-20-407. En. Sec. 7, Ch. 508, L. 1973; R.C.M. 1947, 71-1907.

53-20-411. En. Sec. 11, Ch. 508, L. 1973; R.C.M. 1947, 71-1911.

53-20-412. En. Sec. 12, Ch. 508, L. 1973; R.C.M. 1947, 71-1912.

Part 5

State-Owned Facilities

53-20-501. Primary function of Montana developmental center and Eastmont human services center. The primary functions of the Montana developmental center and the Eastmont human services center are the care, treatment, training, education, and necessary medical treatment of mentally retarded persons.

History: En. Sec. 4, Ch. 111, L. 1971; amd. Sec. 72, Ch. 120, L. 1974; R.C.M. 1947, 80-2604; amd. Sec. 4, Ch. 132, L. 1983; amd. Sec. 8, Ch. 151, L. 1985.

53-20-502. Location of and services provided by Eastmont human services center. The mental retardation center at Glendive is the Eastmont human services center for residential and outpatient care of mentally retarded persons residing in Montana. The center may admit mentally retarded persons not residing in Montana in those circumstances in which Montana has agreed to do so by agreement with any other state. The center shall provide services similar to those provided at the Montana developmental center. However, the center may not be a duplication of the Montana developmental center but shall be an extension thereof.

History: En. Sec. 3, Ch. 255, L. 1967; amd. Sec. 1, Ch. 275, L. 1969; amd. Sec. 1, Ch. 101, L. 1973; amd. Sec. 58, Ch. 120, L. 1974; R.C.M. 1947, 80-2310; amd. Sec. 5, Ch. 132, L. 1983; amd. Sec. 9, Ch. 151, L. 1985.

53-20-503. Repealed. Sec. 7, Ch. 132, L. 1983.

History: En. Sec. 1, Ch. 537, L. 1979.

53-20-504. Powers and duties of department of public health and human services. The department of public health and human services:

(1) may operate or contract with a nonprofit corporation that demonstrates expertise in and the capability of providing programs for the patient population to be served by the facility and for the operation and management of nursing homes;

(2) shall ensure that any state-owned nursing homes are in compliance with federal and state regulations;

(3) shall adopt rules for staffing requirements and the admission of patients;

(4) may accept grants, gifts, bequests, and contributions in money or property or any other form from individuals, corporations, associations, or federal, state, and local government agencies for the purposes of establishing and operating nursing homes.

History: En. Sec. 2, Ch. 537, L. 1979; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 484, Ch. 546, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-20-505. Disposition of facility. Section 53-20-504 does not prohibit the disposition of the facility as provided in 77-2-302 if an appropriate use for the facility cannot be found by the department of public health and human services.

History: En. Sec. 3, Ch. 537, L. 1979; amd. Sec. 6, Ch. 132, L. 1983; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 485, Ch. 546, L. 1995.

CHAPTER 21

MENTALLY ILL

Part 1 — Treatment of the Seriously Mentally Ill

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Part 1
Treatment of the Seriously Mentally Ill

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53-21-101. Purpose. The purpose of this part is to:

(1) secure for each person who may be suffering from a mental disorder and requiring commitment the care and treatment suited to the needs of the person and to ensure that the care and treatment are skillfully and humanely administered with full respect for the person's dignity and personal integrity;

(2) accomplish this goal whenever possible in a community-based setting;

(3) accomplish this goal in an institutionalized setting only when less restrictive alternatives are unavailable or inadequate and only when a person is suffering from a mental disorder and requires commitment; and

(4) ensure that due process of law is accorded any person coming under the provisions of this part.

History: En. 38-1301 by Sec. 1, Ch. 466, L. 1975; amd. Sec. 1, Ch. 546, L. 1977; R.C.M. 1947, 38-1301; amd. Sec. 14, Ch. 490, L. 1997.

53-21-102. Definitions. As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.

(3) "Court" means any district court of the state of Montana.

(4) "Department" means the department of public health and human services provided for in 2-15-2201.

(5) "Emergency situation" means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment.

(6) "Friend of respondent" means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of

the respondent. The court may at any time, for good cause, change its designation of the friend of respondent.

(7) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions. The term does not include:

(a) addiction to drugs or alcohol;

(b) drug or alcohol intoxication;

(c) mental retardation; or

(d) epilepsy.

(8) "Mental health facility" or "facility" means a public hospital or a licensed private hospital that is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health clinic or treatment center approved by the department. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(9) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(10) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(11) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

(12) "Professional person" means:

(a) a medical doctor; or

(b) a person who has been certified, as provided for in 53-21-106, by the department.

(13) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(14) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

(15) "State hospital" means the Montana state hospital.

History: Ap. p. 38-1302 by Sec. 2, Ch. 466, L. 1975; amd. Sec. 9, Ch. 37, L. 1977; amd. Sec. 2, Ch. 546, L. 1977; Sec. 38-1302, R.C.M. 1947; (15)En. 38-106.1 by Sec. 3, Ch. 120, L. 1974; Sec. 38-106.1, R.C.M. 1947; R.C.M. 1947, 38-106.1, 38-1302; amd. Sec. 1, Ch. 547, L. 1979; amd. Sec. 18, Ch. 361, L. 1983; amd. Sec. 1, Ch. 578, L. 1983; amd. Sec. 1, Ch. 376, L. 1987; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 312, L. 1993; amd. Sec. 486, Ch. 546, L. 1995; amd. Sec. 15, Ch. 490, L. 1997.

53-21-103. Court records to be kept separate. Records and papers in proceedings under this part shall be maintained separately by the clerks of the several courts. Five days prior to the release of a respondent or patient committed to a mental health facility, the facility shall notify the clerk of the court, and the clerk shall immediately seal the record in the case and omit the name of the respondent or patient from the index or indexes of cases in the court unless the court orders the record opened for good cause shown.

History: En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; R.C.M. 1947, 38-1309(5); amd. Sec. 2, Ch. 547, L. 1979.

53-21-104. Powers and duties of mental disabilities board of visitors. (1) The board is an independent board of inquiry and review to assure that the treatment of all persons either voluntarily or involuntarily admitted to a mental facility is humane and decent and meets the requirements set forth in this part.

(2) The board shall review all plans for experimental research involving persons admitted to a mental health facility to assure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education, and welfare. An experimental research project involving persons admitted to a mental health facility affected by this part may not be commenced unless it is approved by the mental disabilities board of visitors.

(3) The board shall at least annually inspect every mental health facility which is providing treatment and evaluation to any person pursuant to this part. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment areas. The board shall inquire concerning all treatment programs being implemented by the facility.

(4) The board shall annually insure that a treatment plan exists and is being implemented for each patient admitted or committed to a mental health facility under this part. The board shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

(5) The board may assist any patient at a mental health facility in resolving any grievance the patient may have concerning the patient's commitment or course of treatment in the facility.

(6) The board shall employ and be responsible for full-time legal counsel at the state hospital, whose responsibility is to act on behalf of all patients at the institution. The board shall insure that there is sufficient legal staff and facilities to insure availability to all patients and shall require that the appointed counsel periodically interview every patient and examine the patient's files and records. The board may employ additional legal counsel for representation of patients in a similar manner at any other mental health facility having inpatient capability.

(7) If the board believes that any facility is failing to comply with the provisions of this part in regard to its physical facilities or its treatment of any patient, it shall report its findings at once to the professional person in charge of the facility and the director of the department, and if appropriate, after waiting a reasonable time for a response from the professional person, the board may notify the next of kin or guardian of any patient involved, the friend of respondent appointed by the court for any patient involved, and the district court which has jurisdiction over the facility.

(8) The board shall report annually to the governor concerning:

(a) the status of the mental health facilities and treatment programs which it has inspected; and

(b) medications involuntarily administered to patients in mental health facilities and the effectiveness of the review procedure required by 53-21-127(2) in protecting patients from unnecessary or excessive medication.

History: En. 38-1330 by Sec. 30, Ch. 466, L. 1975; amd. Sec. 16, Ch. 546, L. 1977; R.C.M. 1947, 38-1330(2) thru (9); amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 41, Ch. 112, L. 1991; amd. Sec. 37, Ch. 349, L. 1993; amd. Sec. 1, Ch. 434, L. 1995.

Cross-References

Procedural rights, 53-20-112.

Denial of legal rights, 53-20-141.

Protection and advocacy system — designation and authority, 53-21-169.

53-21-105. Certification of professional persons required. No person may act in a professional capacity as provided for in this part unless he is a professional person as defined in 53-21-102.

History: En. Sec. 2, Ch. 578, L. 1983.

53-21-106. Certification of professional persons. (1) The department shall certify professional persons as defined in 53-21-102 for the purpose of this part.

(2) The department, with reference to recognized national standards in the field of mental health, shall adopt standards and rules governing the certification of professional persons as defined in 53-21-102.

(3) The rules for certification must address but are not limited to:

(a) the type of education that an individual has received, including degrees;

(b) the type of experience or training received by the individual;

(c) continuing education, training, instruction, and work experience necessary to maintain certification;

(d) an examination instrument to be used to determine an individual's proficiency and understanding of mental health laws, diagnosis, and treatment procedures;

(e) the procedure for categorical certification qualifying the level of professional authority and responsibility of an individual; and

(f) specific procedures for certification, recertification, and revocation of certification.

History: En. Sec. 3, Ch. 578, L. 1983; amd. Sec. 2, Ch. 376, L. 1987; amd. Sec. 487, Ch. 546, L. 1995.

Cross-References

Qualifications of professional person, 53-21-161.

53-21-107 through 53-21-110 reserved.

53-21-111. Voluntary admission — content of admission form — requirements for valid admission. (1) (a) This part may not be construed to limit the right of a person to make voluntary application for admission at any time to a mental health facility or professional person.

(b) An application for admission to a mental health facility must be in writing on a form prescribed by the facility. The form must explain:

(i) the process for requesting release and that the request must be in writing;

(ii) that the individual applying for release may be held involuntarily for up to 5 days after requesting release; and

(iii) that the facility may request a court to involuntarily commit the applicant.

(c) A statement of the rights of the person voluntarily applying for admission, as set out in this part, must be furnished to the patient within 12 hours.

(2) An applicant who wishes to voluntarily apply for admission to the state hospital shall first obtain certification from a professional person that the applicant is suffering from a mental disorder. The professional person shall then obtain confirmation from the department or the department's designee that the facilities available to the mental health region in which the applicant resides are unable to provide adequate evaluation and treatment. The department shall adopt rules to establish a procedure whereby a professional person shall obtain the confirmation from the department or the department's designee as required in this section.

(3) An application for voluntary admission must give the facility the right to detain the applicant for no more than 5 days, excluding weekends and holidays, past the applicant's written request for release. A mental health facility may adopt rules providing for detention of the applicant for less than 5 days. The facility shall notify all applicants of the rules and post the rules as provided in 53-21-168.

(4) An individual applying for voluntary admission pursuant to this section may not be admitted unless:

(a) the admission is approved by a professional person;

(b) the individual applying for admission has been informed orally of the matters required by subsection (1)(b) to be stated in the written application for admission;

(c) a copy of the written application for admission has been given to the applicant; and

(d) the admission otherwise complies with the requirements of this section.

(5) A person voluntarily entering or remaining in a mental health facility shall enjoy all the rights secured to a person involuntarily committed to the facility.

History: En. 38-1303 by Sec. 3, Ch. 466, L. 1975; amd. Sec. 3, Ch. 546, L. 1977; R.C.M. 1947, 38-1303(1) thru (3), (6); amd. Sec. 3, Ch. 547, L. 1979; amd. Sec. 1, Ch. 603, L. 1985; amd. Sec. 10, Ch. 590, L. 1995; amd. Sec. 1, Ch. 247, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 247 at end of first sentence in (1)(b) after "facility" deleted "and approved by the department" and deleted former second sentence that read: "An application is not valid unless it is approved by a professional person and a copy is given to the person being voluntarily admitted"; inserted (1)(b)(i) through (1)(b)(iii) outlining explanations form must include; in (1)(c) near middle after "this part" deleted "including the right to release"; inserted (4) outlining requirements for valid voluntary admission; and made minor changes in style. Amendment effective April 5, 1999.

53-21-112. Voluntary admission of minors. (1) Notwithstanding any other provision of law, a parent or guardian of a minor may consent to mental health services to be rendered to the minor by:

(a) a facility;

(b) a person licensed in this state to practice medicine; or

(c) a mental health professional licensed in this state.

(2) A minor who is at least 16 years of age may, without the consent of a parent or guardian, consent to receive mental health services from those facilities or persons listed in subsection (1).

(3) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary admission of a minor to a mental health facility but not to the state hospital.

(4) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment is for the same period of time as that for an adult. A minor voluntarily admitted with consent of the minor's parent or guardian has the right to be released within 5 days of a request by the parent or guardian as provided in 53-21-111(3). A minor who has been admitted without consent by a parent or guardian, pursuant to subsection (2), may also make a request and also has the right to be released within 5 days as provided in 53-21-111(3). Unless there has been a periodic review and a voluntary readmission consented to by the parent or guardian in the case of a minor patient or consented to by the minor alone in the case of a minor patient who is at least 16 years of age, voluntary admission terminates at the expiration of 1 year. Counsel must be appointed for the minor at the minor's request or at any time that the minor is faced with potential legal proceedings.

History: En. 38-1303 by Sec. 3, Ch. 466, L. 1975; amd. Sec. 3, Ch. 546, L. 1977; R.C.M. 1947, 38-1303(7) thru (9); amd. Sec. 14, Ch. 38, L. 1979; amd. Sec. 4, Ch. 547, L. 1979; amd. Sec. 12, Ch. 363, L. 1983; amd. Sec. 12, Ch. 14, Sp. L. June 1986; amd. Sec. 16, Ch. 490, L. 1997.

Cross-References

Validity of consent of minor for health services, 41-1-402.

53-21-113. Costs of committing a patient already voluntarily admitted — transportation costs for voluntary admission. (1) The cost of involuntarily committing a patient who is voluntarily admitted to a mental health facility at the time the involuntary proceedings are commenced shall be borne by the county of the patient's residence at the time of admission.

(2) The costs of transportation to a mental health facility under 53-21-111 and 53-21-112 shall be provided by the welfare department of the county of the patient's residence. However, if protective proceedings under Title 72, chapter 5, have been or are initiated with respect to the person, the welfare department may seek reimbursement. If no one else is available to transport him, the sheriff shall transport the person.

History: En. 38-1303 by Sec. 3, Ch. 466, L. 1975; amd. Sec. 3, Ch. 546, L. 1977; R.C.M. 1947, 38-1303(4), (5).

53-21-114. Notice of rights to be given. (1) Whenever a person is involuntarily detained pursuant to 53-21-121 through 53-21-126, the person shall at the time of detention be informed of his constitutional rights and his rights under this part. Within 3 days of such detention, he must also be informed in writing by the county attorney of such rights.

(2) Every respondent subject to an order for short-term treatment or long-term care and treatment shall be advised in writing of his right to appeal the order by the court at the conclusion of any hearing the result of which such an order may be entered.

History: (1)En. 38-1304 by Sec. 4, Ch. 466, L. 1975; amd. Sec. 4, Ch. 546, L. 1977; Sec. 38-1304, R.C.M. 1947; (2)En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; Sec. 38-1304, R.C.M. 1947; R.C.M. 1947, 38-1304(part), 38-1309(4); amd. Sec. 1, Ch. 522, L. 1983; amd. Sec. 1, Ch. 537, L. 1991.

Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

53-21-115. Procedural rights. In addition to any other rights that may be guaranteed by the constitution of the United States and of this state, by the laws of this state, or by this part, any person who is involuntarily detained or against whom a petition is filed pursuant to this part has the following rights:

(1) the right to notice reasonably in advance of any hearing or other court proceeding concerning the person;

(2) the right in any hearing to be present, to offer evidence, and to present witnesses in any proceeding concerning the person;

(3) the right to know, before a hearing, the names and addresses of any witnesses who will testify in support of a petition;

(4) the right in any hearing to cross-examine witnesses;

(5) the right to be represented by counsel;

(6) the right to remain silent;

(7) the right in any hearing to be proceeded against according to the rules of evidence applicable to civil matters generally;

(8) the right to view and copy all petitions on file with the court concerning the person;

(9) the right to be examined by a professional person of the person's choice when the professional person is willing and reasonably available;

(10) the right to be dressed in the person's own clothes at any hearing held pursuant to this part;

(11) the right to refuse any but lifesaving medication for up to 24 hours prior to any hearing held pursuant to this part; and

(12) the right to voluntarily take necessary medications prior to any hearing pursuant to this part.

History: En. 38-1304 by Sec. 4, Ch. 466, L. 1975; amd. Sec. 4, Ch. 546, L. 1977; R.C.M. 1947, 38-1304(4); amd. Sec. 5, Ch. 547, L. 1979; amd. Sec. 3, Ch. 376, L. 1987; amd. Sec. 17, Ch. 490, L. 1997.

Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

53-21-116. Right to be present at hearing or trial — appointment of counsel. The person alleged to be suffering from a mental disorder and requiring commitment has the right to be present at any hearing or trial. If the person has no attorney, the judge shall appoint one to represent the person at either the hearing or the trial, or both, who must be compensated from the public funds of the county where the respondent resides.

History: En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; R.C.M. 1947, 38-1309(part); amd. Sec. 4, Ch. 376, L. 1987; amd. Sec. 18, Ch. 490, L. 1997.

53-21-117. Right to representation by own attorney. The respondent or the friend of respondent appointed by the court may secure an attorney of his own choice and at his own expense to represent the respondent.

History: En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; R.C.M. 1947, 38-1309(part); amd. Sec. 14, Ch. 547, L. 1979.

53-21-118. Right to examination by professional person of own choosing. (1) The respondent, his attorney, or the friend of respondent appointed by the court may secure a professional person of his own choice to examine the respondent and to testify at the hearing before the court or jury as to the results of his examination.

(2) If the person wishing to secure the testimony of a professional person is unable to do so because of financial reasons and if the respondent joins in the request for the examination, the court shall appoint a professional person other than the professional person requesting the commitment to perform the examination. Whenever possible, the court shall allow the respondent a reasonable choice of an available professional person qualified to perform the requested examination who will be compensated from the public funds of the county where the respondent resides.

History: En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; R.C.M. 1947, 38-1309(part); amd. Sec. 14, Ch. 547, L. 1979.

53-21-119. Waiver of rights. (1) A person may waive his rights, or if the person is not capable of making an intentional and knowing decision, these rights may be waived by his counsel and friend of respondent acting together if a record is made of the reasons for the waiver. The right to counsel may not be waived. The right to treatment provided for in this part may not be waived.

(2) The right of the respondent to be physically present at a hearing may also be waived by his attorney and the friend of respondent with the concurrence of the professional person and the judge upon a finding supported by facts that:

(a) the presence of the respondent at the hearing would be likely to seriously adversely affect his mental condition; and

(b) an alternative location for the hearing in surroundings familiar to the respondent would not prevent such adverse effects on his mental condition.

(3) (a) In the case of a minor, provided that a record is made of the reasons for the waiver, his rights may be waived by the mutual consent of his counsel and parents or guardian or guardian ad litem if there are no parents or guardian.

(b) If there is an apparent conflict of interest between a minor and his parents or guardian, the court shall appoint a guardian ad litem for him.

History: En. 38-1304 by Sec. 4, Ch. 466, L. 1975; amd. Sec. 4, Ch. 546, L. 1977; R.C.M. 1947, 38-1304(part); amd. Secs. 6, 14, Ch. 547, L. 1979.

53-21-120. Detention to be in least restrictive environment — preference for mental health facility — court relief — prehearing detention of mentally ill person prohibited. (1) A person detained pursuant to this part must be detained in the least restrictive environment required to protect the life and physical safety of the person detained or members of the public; in this respect, prevention of significant injury to property may be considered.

(2) Whenever possible, a person detained pursuant to this part must be detained in a mental health facility and in the county of residence. If the person detained demands a jury trial and trial cannot be held within 7 days, the individual may be sent to the state hospital until time of trial if arrangements can be made to return him to trial. The trial must be held within 30 days. The county of residence shall pay the cost of travel and professional services associated with the trial. A person may not be detained in any hospital or other

medical facility that is not a mental health facility unless the hospital or facility has agreed in writing to admit the person.

(3) A person may not be detained pursuant to this part in a jail or other correctional facility.

(4) A person detained prior to involuntary commitment may apply to the court for immediate relief with respect to the need for detention or the adequacy of the facility being utilized to detain.

History: En. 38-1304 by Sec. 4, Ch. 466, L. 1975; amd. Sec. 4, Ch. 546, L. 1977; R.C.M. 1947, 38-1304(5); amd. Sec. 7, Ch. 547, L. 1979; amd. Sec. 5, Ch. 376, L. 1987; amd. Sec. 1, Ch. 360, L. 1989; amd. Sec. 1, Ch. 636, L. 1991.

53-21-121. Petition for commitment — contents of — notice of. (1) The county attorney, upon the written request of any person having direct knowledge of the facts, may file a petition with the court alleging that there is a person within the county who is suffering from a mental disorder and who requires commitment pursuant to this chapter.

(2) The petition must contain:

(a) the name and address of the person requesting the petition and the person's interest in the case;

(b) the name of the respondent and, if known, the address, age, sex, marital status, and occupation of the respondent;

(c) the purported facts supporting the allegation of mental disorder, a statement of the disposition sought pursuant to 53-21-127(2), and the need for commitment;

(d) the name and address of every person known or believed to be legally responsible for the care, support, and maintenance of the respondent for whom evaluation is sought;

(e) the name and address of the respondent's next of kin to the extent known to the county attorney and the person requesting the petition;

(f) the name and address of any person whom the county attorney believes might be willing and able to be appointed as friend of respondent;

(g) the name, address, and telephone number of the attorney, if any, who has most recently represented the respondent for whom evaluation is sought; if there is no attorney, there must be a statement as to whether to the best knowledge of the person requesting the petition the respondent for whom evaluation is sought is indigent and unable to afford the services of an attorney; and

(h) a statement of the rights of the respondent, which must be in conspicuous print and identified by a suitable heading.

(3) Notice of the petition must be hand-delivered to the respondent and to the respondent's counsel on or before the initial appearance of the respondent before the judge or justice of the peace. The respondent's counsel shall meet with the respondent, explain the substance of the petition, and explain the probable course of the proceedings. Notice of the petition and the order setting the date and time of the hearing and the names of the respondent's counsel, professional person, and friend of respondent must be hand-delivered or mailed to the person or persons legally responsible for care, support, and maintenance of the respondent, the next of kin identified in the petition, and any other person identified by the county attorney as a possible friend of respondent other than the one named as the friend of respondent. The notice may provide, other

than as to the respondent and the respondent's counsel, that no further notice will be given unless written request is filed with the clerk of court.

History: **En. 38-1305 by Sec. 5, Ch. 466, L. 1975; amd. Sec. 5, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(part); amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 6, Ch. 376, L. 1987; amd. Sec. 19, Ch. 490, L. 1997.**

Cross-References

Mileage and expenses of Sheriff for delivery of mentally ill persons, 7-32-2144.

53-21-122. Petition for commitment — filing of — initial hearing on. (1) The petition must be filed with the clerk of court who shall immediately notify the judge.

(2) If a judge is available, the judge shall consider the petition, and if the judge finds no probable cause, it must be dismissed. If the judge finds probable cause, counsel must be immediately appointed for the respondent, and the respondent must be brought before the court with the respondent's counsel. The respondent must be advised of the respondent's constitutional rights, the respondent's rights under this part, and the substantive effect of the petition. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and a friend of respondent and set a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The desires of the respondent must be taken into consideration in the appointment of the friend of respondent and in the confirmation of the appointment of the attorney.

(3) If a judge is not available in the county, the clerk shall notify a resident judge by telephone and shall read the petition to the judge. If the judge finds no probable cause, the petition must be dismissed. If the judge finds probable cause, the judge shall cause the clerk to issue an order appointing counsel and a professional person and setting a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The order must also direct that the respondent be brought before a justice of the peace with the respondent's counsel to be advised of the respondent's constitutional rights, the respondent's rights under this part, and the contents of the clerk's order, as well as to furnish the respondent with a copy. The justice of the peace shall ascertain the desires of the respondent with respect to the appointment of counsel, and this information must be immediately communicated to the resident judge. The resident judge may appoint other counsel, may confer with respondent's counsel and the county attorney in order to appoint a friend of respondent, and may do all things necessary through the clerk of court by telephone as if the resident judge were personally present.

History: **En. 38-1305 by Sec. 5, Ch. 466, L. 1975; amd. Sec. 5, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(3); amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 7, Ch. 376, L. 1987; amd. Sec. 20, Ch. 490, L. 1997.**

53-21-123. Examination of respondent following initial hearing — recommendation of professional person. (1) Following the initial hearing, whether before a judge or justice of the peace, the respondent must be examined by the professional person without unreasonable delay. The examination may not exceed a period of 4 hours. The professional person shall immediately notify the county attorney of the findings in person or by phone and shall make a written report of the examination to the court, with copies to the respondent's attorney and the county attorney. If the professional person recommends commitment, the professional person's written report must contain a statement of the professional person's recommendations to the court for disposition under 53-21-127(2).

(2) The following action must be taken based on the professional person's findings:

(a) If the professional person recommends dismissal, the professional person shall additionally notify counsel and the respondent must be released and the petition dismissed. However, the county attorney may, upon good cause shown, request the court to order an additional, but no more than one, examination by a different professional person for a period of no more than 4 hours.

(b) If the court finds that commitment proceedings should continue, the hearing must be held as scheduled.

(3) The court may not order further evaluation pending the hearing unless sound medical reasons require additional time for a complete evaluation. The reasons must be set forth in the order, along with the amount of additional time needed.

History: En. 38-1305 by Sec. 5, Ch. 466, L. 1975; amd. Sec. 5, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(4); amd. Sec. 8, Ch. 376, L. 1987; amd. Sec. 21, Ch. 490, L. 1997.

53-21-124. Detention of respondent pending hearing or trial — jail prohibited. (1) The court may not order detention of a respondent pending the hearing unless requested by the county attorney and upon the existence of probable cause for detention. Counsel must be orally notified immediately. Counsel for the respondent may then request a detention hearing, which must be held forthwith.

(2) In the event of detention, the respondent must be detained in the least restrictive setting necessary to assure his presence and assure his safety and the safety of others as provided in 53-21-120.

(3) If the respondent is detained, he has the right to be examined additionally by a professional person of his choice. Unless objection is made by counsel for the respondent, he must continue to be evaluated and treated by the professional person pending the hearing.

(4) A respondent may not be detained in a jail or other correctional facility pending a hearing or trial to determine whether the respondent should be committed to a mental health facility.

History: En. 38-1305 by Sec. 5, Ch. 466, L. 1975; amd. Sec. 5, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(5); amd. Sec. 2, Ch. 360, L. 1989; amd. Sec. 4, Ch. 312, L. 1991; amd. Sec. 2, Ch. 636, L. 1991.

Cross-References

Mileage and expenses of Sheriff for delivery of mentally ill persons, 7-32-2144.

53-21-125. Request for jury trial. At any time prior to the date set for hearing, the respondent, through his counsel, may request a jury trial, whereupon the time set for hearing shall be vacated and the matter set on the court's jury calendar at the earliest date possible, the matter taking precedence over all other matters. If there is not a jury in attendance, a jury shall be selected in the manner provided in 3-15-506 and a date set for trial by jury not later than 7 days, exclusive of Saturdays, Sundays, and holidays.

History: En. 38-1305 by Sec. 5, Ch. 466, L. 1975; amd. Sec. 5, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(part).

Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

53-21-126. Trial or hearing on petition. (1) The respondent must be present unless the respondent's presence has been waived as provided in 53-21-119(2), and the respondent must be represented by counsel at all stages of the trial. The trial must be limited to the determination of whether or not the respondent is suffering from a mental disorder and requires commitment. At the trial, the court shall consider all the facts relevant to the issues of whether the respondent is suffering from a mental disorder. If the court determines that the respondent is suffering from a mental disorder, the court shall then determine whether the respondent requires commitment. In determining whether the respondent requires commitment, the court shall consider the following:

(a) whether the respondent, because of a mental disorder, is substantially unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety;

(b) whether the respondent has recently, because of a mental disorder and through an act or an omission, caused self-injury or injury to others;

(c) whether, because of a mental disorder, there is an imminent threat of injury to the respondent or to others because of the respondent's acts or omissions; and

(d) whether the respondent's mental disorder, as demonstrated by the respondent's recent acts or omissions, will, if untreated, predictably result in deterioration of the respondent's mental condition to the point at which the respondent will become a danger to self or to others or will be unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety. Predictability may be established by the respondent's relevant medical history.

(2) The standard of proof in a hearing held pursuant to this section is proof beyond a reasonable doubt with respect to any physical facts or evidence and clear and convincing evidence as to all other matters. However, the respondent's mental disorder must be proved to a reasonable medical certainty. Imminent threat of self-inflicted injury or injury to others must be proved by overt acts or omissions, sufficiently recent in time as to be material and relevant as to the respondent's present condition.

(3) The professional person appointed by the court must be present for the trial and subject to cross-examination. The trial is governed by the Montana Rules of Civil Procedure. However, if the issues are tried by a jury, at least two-thirds of the jurors shall concur on a finding that the respondent is suffering from a mental disorder and requires commitment. The written report

of the professional person that indicates the professional person's diagnosis may be attached to the petition, but any matter otherwise inadmissible, such as hearsay matter, is not admissible merely because it is contained in the report. The court may order the trial closed to the public for the protection of the respondent.

(4) The professional person may testify as to the ultimate issue of whether the respondent is suffering from a mental disorder and requires commitment. This testimony is insufficient unless accompanied by evidence from the professional person or others that:

(a) the respondent, because of a mental disorder, is substantially unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety;

(b) the respondent has recently, because of a mental disorder and through an act or an omission, caused self-injury or injury to others;

(c) because of a mental disorder, there is an imminent threat of injury to the respondent or to others because of the respondent's acts or omissions; or

(d) (i) the respondent's mental disorder:

(A) has resulted in recent acts, omissions, or behaviors that create difficulty in protecting the respondent's life or health;

(B) is treatable, with a reasonable prospect of success;

(C) has resulted in the respondent's refusing or being unable to consent to voluntary admission for treatment; and

(ii) will, if untreated, predictably result in deterioration of the respondent's mental condition to the point at which the respondent will become a danger to self or to others or will be unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety. Predictability may be established by the respondent's relevant medical history.

(5) The court, upon the showing of good cause and when it is in the best interests of the respondent, may order a change of venue.

History: En. 38-1305 by Sec. 5, Ch. 466, L. 1975; amd. Sec. 5, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(part); amd. Sec. 8, Ch. 547, L. 1979; amd. Sec. 9, Ch. 376, L. 1987; amd. Sec. 22, Ch. 490, L. 1997.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

53-21-127. Posttrial disposition. (1) If, upon trial, it is determined that the respondent is not suffering from a mental disorder or does not require commitment within the meaning of this part, the respondent must be discharged and the petition dismissed.

(2) (a) If it is determined that the respondent is suffering from a mental disorder and requires commitment within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing must be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

(i) commit the respondent to the state hospital for a period of not more than 3 months;

(ii) commit the respondent to a community facility, program, or course of treatment for a period of not more than 3 months;

(iii) order the respondent to be placed in the care and custody of a relative or guardian or some other appropriate place other than an institution;

(iv) order outpatient therapy; or

(v) make some other appropriate order for treatment.

(b) A treatment ordered pursuant to this subsection may not affect the respondent's custody or course of treatment for a period of more than 3 months.

(c) In determining which of the alternatives in subsection (2)(a) to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment. The court may authorize the chief medical officer of a facility or a physician designated by the court to administer appropriate medication involuntarily if the court finds that involuntary medication is necessary to protect the respondent or the public or to facilitate effective treatment. Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility or a physician designated by the court approves it prior to the beginning of the involuntary administration and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary administration or, if prior review is not possible, within 5 working days after the beginning of the involuntary administration. The medication review committee must include at least one person who is not an employee of the facility or program. The patient and the patient's attorney or advocate, if the patient has one, must receive adequate written notice of the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The involuntary administration of medication must be again reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration if medication is still being involuntarily administered. The mental disabilities board of visitors and the director of the department of public health and human services must be fully informed of the matter within 5 working days after the beginning of the involuntary administration. The director shall report to the governor on an annual basis.

(d) Satisfaction of any one of the criteria listed in 53-21-126(1) justifies commitment pursuant to this chapter. However, if the court relies solely upon the criterion provided in 53-21-126(1)(d), the court may require commitment only to a community facility and may not require commitment at the state hospital.

(e) In ordering commitment pursuant to this section, the court shall make the following findings of fact:

(i) a detailed statement of the facts upon which the court found the respondent to be suffering from a mental disorder and requiring commitment;

(ii) the alternatives for treatment that were considered;

(iii) the alternatives available for treatment of the respondent;

(iv) the reason that any treatment alternatives were determined to be unsuitable for the respondent;

(v) the name of the facility, program, or individual to be responsible for the management and supervision of the respondent's treatment;

(vi) if the order includes a requirement for inpatient treatment, the reason inpatient treatment was chosen from among other alternatives; and

(vii) if the order includes involuntary medication, the reason involuntary medication was chosen from among other alternatives.

History: En. 38-1305, 38-1306 by Secs. 5, 6, Ch. 466, L. 1975; amd. Secs. 5, 6, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(part), 38-1306(1); amd. Sec. 9, Ch. 547, L. 1979; amd. Sec. 10, Ch. 376, L. 1987; amd. Sec. 2, Ch. 434, L. 1995; amd. Sec. 23, Ch. 490, L. 1997.

Cross-References

Mileage and expenses of Sheriff for delivery of mentally ill persons, 7-32-2144.

53-21-128. Petition for extension of commitment period. (1) (a) Not less than 2 calendar weeks prior to the end of the 3-month period of commitment provided for in 53-21-127(2), the professional person in charge of the patient at the place of commitment may petition the district court in the county where the patient is committed for extension of the commitment period unless otherwise ordered by the original committing court. The petition must be accompanied by a written report and evaluation of the patient's mental and physical condition. The report must describe any tests and evaluation devices that have been employed in evaluating the patient, the course of treatment that was undertaken for the patient, and the future course of treatment anticipated by the professional person.

(b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to the patient, the patient's next of kin, if reasonably available, the friend of respondent appointed by the court, and the patient's counsel. If any person notified requests a hearing prior to the termination of the previous commitment authority, the court shall immediately set a time and place for a hearing on a date not more than 10 days from the receipt of the request and notify the same people, including the professional person in charge of the patient. If a hearing is not requested, the court shall enter an order of commitment for a period not to exceed 6 months.

(c) Procedure on the petition for extension when a hearing has been requested must be the same in all respects as the procedure on the petition for the original 3-month commitment except the patient is not entitled to trial by jury. The hearing must be held in the district court having jurisdiction over the facility in which the patient is detained unless otherwise ordered by the court. Court costs and witness fees, if any, must be paid by the county that paid the same costs in the initial commitment proceedings.

(d) If upon the hearing the court finds the patient not to be suffering from a mental disorder and requiring commitment within the meaning of this part, the patient must be discharged and the petition dismissed. If the court finds that the patient continues to suffer from a mental disorder and to require commitment, the court shall order commitment, custody in relatives, outpatient therapy, or other order as set forth in 53-21-127(2). However, an order may not affect the patient's custody for more than 6 months. In its order, the court shall describe what alternatives for treatment of the patient are available, what alternatives were investigated, and why the investigated alternatives were not found suitable. The court may not order continuation of an alternative that does not include a comprehensive, individualized plan of treatment for the patient. A court order for the continuation of an alternative must include a specific finding that a comprehensive, individualized plan of treatment exists.

(2) Further extensions may be obtained under the same procedure described in subsection (1); however, the patient's custody may not be affected for more than 1 year without a renewal of the commitment under the procedures set forth in subsection (1), including a statement of the findings required by subsection (1).

History: En. 38-1306 by Sec. 6, Ch. 466, L. 1975; amd. Sec. 6, Ch. 546, L. 1977; R.C.M. 1947, 38-1306(3), (4); amd. Secs. 10, 14, Ch. 547, L. 1979; amd. Sec. 11, Ch. 376, L. 1987; amd. Sec. 1, Ch. 434, L. 1987; amd. Sec. 24, Ch. 490, L. 1997.

53-21-129. Emergency situation — petition — detention. (1) When an emergency situation exists, a peace officer may take any person who appears to have a mental disorder and to present an imminent danger of death or bodily harm to the person or to others into custody only for sufficient time to contact a professional person for emergency evaluation. If possible, a professional person should be called prior to taking the person into custody.

(2) If the professional person agrees that the person detained is a danger to the person or to others because of a mental disorder and that an emergency situation exists, then the person may be detained and treated until the next regular business day. At that time, the professional person shall release the detained person or file findings with the county attorney who, if the county attorney determines probable cause to exist, shall file the petition provided for in 53-21-121 through 53-21-126 in the county of the respondent's residence. In either case, the professional person shall file a report with the court explaining the professional person's actions.

(3) The county attorney of a county may make arrangements with a federal, state, regional, or private mental facility or with a mental health facility in a county for the detention of persons held pursuant to this section. If an arrangement has been made with a facility that does not, at the time of the emergency, have a bed available to detain the person at that facility, the person may be transported to the state hospital for detention and treatment as provided in this part. This determination must be made on an individual basis in each case, and the professional person at the local facility shall certify to the county attorney that the facility does not have adequate room at that time.

(4) However, before a person is transferred to the state hospital under this section, the state hospital must be notified prior to transfer and shall state that a bed is available for the person.

History: En. 38-1307 by Sec. 7, Ch. 466, L. 1975; amd. Sec. 7, Ch. 546, L. 1977; R.C.M. 1947, 38-1307; amd. Sec. 1, Ch. 560, L. 1983; amd. Sec. 25, Ch. 490, L. 1997.

53-21-130. Transfer or commitment to mental health facility from other institutions. (1) A person who is in the custody of the department for any purpose other than treatment of severe mental illness may not be transferred or committed to a mental health facility for more than 10 days unless the transfer or commitment is effected according to the procedures set out in this part. However, proceedings for involuntary commitment may be commenced in the county of the mental health facility where the person is, in the county of the institution from which the person was transferred to the mental health facility, or in the county of the person's residence. Notice of a transfer must be given immediately to the assigned counsel at the mental health facility and to the parents of minors, guardians, friends of respondent, or conservators.

(2) A person who is in the custody of the department of corrections may be transferred for placement in a mental health facility for a period of up to 10 days, subject to the approval of the mental health facility. A placement in excess of 10 days must be performed according to the procedures for voluntary admission or involuntary commitment as provided in this part. Proceedings for involuntary commitment may be commenced in the county of the mental health facility where the person is placed or in the county of the correctional facility from which the person was transferred. Notice of a transfer must be given to the legal counsel for the person and to the parents of minors, guardians, friends of respondent, or conservators.

History: En. 38-1310 by Sec. 10, Ch. 466, L. 1975; amd. Sec. 10, Ch. 546, L. 1977; R.C.M. 1947, 38-1310; amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 2, Ch. 247, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 247 inserted (2) authorizing person in custody to be transferred to mental health facility and providing procedures relating to transfer; and made minor changes in style. Amendment effective April 5, 1999.

53-21-131. Appeal procedure. Appellate review of any order of short-term evaluation and treatment or long-term commitment may be had by appeal to the supreme court of Montana in the manner as other civil cases, except that the appeal may be taken at any time within 90 days of the actual service of the written notice of the right to appeal required by 53-21-114 or within 90 days after discharge, whichever is later. The patient shall not be released pending appeal unless ordered by the court. The appeal shall have priority above all other matters before the supreme court.

History: En. 38-1311 by Sec. 11, Ch. 466, L. 1975; R.C.M. 1947, 38-1311; amd. Sec. 2, Ch. 522, L. 1983.

53-21-132. Cost of examination and commitment. (1) The cost of precommitment examination, detention, treatment, and taking a person who is suffering from a mental disorder and who requires commitment to a mental health facility must be paid by the county in which the person resides at the time that the person is committed. The sheriff must be allowed the actual expenses incurred in taking a committed person to the facility, as provided by 7-32-2144.

(2) The county of residence shall also pay all precommitment expenses, including transportation to a mental health facility, incurred in connection with the detention, examination, and precommitment custody of the respondent. However, the county of residence is not required to pay costs of treatment and custody of the respondent after the respondent is committed pursuant to this part. The fact that a person is examined, hospitalized, or receives medical, psychological, or other mental health treatment pursuant to this part does not relieve a third party from a contractual obligation to pay for the cost of the examination, hospitalization, or treatment.

(3) The adult respondent or the parent or guardian of a minor shall pay the cost of treatment and custody ordered pursuant to 53-21-127, except to the extent that the adult or minor is eligible for public mental health program funds.

(4) A community service provider that is a private, nonpublic provider may not be required to treat or treat without compensation a person who has been committed.

History: (1)En. Sec. 2311, Pol. C. 1895; re-en. Sec. 1145, Rev. C. 1907; re-en. Sec. 1442, R.C.M. 1921; Cal Pol. C. Sec. 2175; re-en. Sec. 1442, R.C.M. 1935; amd. Sec. 33, Ch. 466, L. 1975; Sec. 38-212, R.C.M. 1947; (2)En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; Sec. 38-1309, R.C.M. 1947; R.C.M. 1947, 38-212, 38-1309(part); amd. Sec. 26, Ch. 490, L. 1997.

53-21-133. Transfer to nonstate facilities. (1) If a person is committed under the provisions of this part and is eligible for hospital care or treatment by an agency of the United States and if a certificate of notification from such agency showing that facilities are available and that the person is eligible for care or treatment therein is received, the court may order the person to be placed in the custody of the agency for hospitalization. The chief officer of any hospital or institution operated by such an agency and in which a person is so hospitalized shall be vested with the same powers as the superintendent of the state hospital with respect to detention, custody, transfer, conditional release, or discharge of the person. Jurisdiction shall be retained in the appropriate courts of this state to inquire into the mental condition of persons so hospitalized and to determine the necessity for continuance of their hospitalization.

(2) Consistent with other provisions of this part, a person committed under this part for a period of 3 months or longer may be committed by the court to the custody of friends or next of kin residing outside the state or to a mental health facility located outside the state if the out-of-state facility agrees to receive the patient. No such commitment shall be for a longer period of time than is permitted within the state. If the patient is indigent, the expense of supporting him in an out-of-state facility and the expense of transportation shall be borne by the state of Montana.

(3) The transfer out of Montana of persons committed under the provisions of this part or into Montana under the laws of another jurisdiction shall be governed by the provisions of the Interstate Compact on Mental Health.

History: En. 38-1314 by Sec. 14, Ch. 466, L. 1975; R.C.M. 1947, 38-1314.

Cross-References

Interstate Compact on Mental Health, Title 53, ch. 22.

53-21-134. Receipt of nonresident person suffering from a mental disorder pending return to home state. A person who is suffering from a mental disorder and in need of commitment and who is not a resident of this state may be committed to the state hospital pursuant to this part. The state hospital shall make every effort to return the nonresident to the state of the person's residence as provided in chapter 22, part 1, of this title.

History: En. Sec. 1, Ch. 198, L. 1963; amd. Sec. 8, Ch. 120, L. 1974; amd. Sec. 2, Ch. 37, L. 1977; R.C.M. 1947, 38-120; amd. Sec. 27, Ch. 490, L. 1997; amd. Sec. 3, Ch. 247, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 247 in middle of first sentence substituted "committed to" for "received into" and at end substituted "pursuant to this part" for "for a period not to exceed 30 days pending return to the state of the person's residence"; and inserted second sentence requiring state hospital to make effort to return nonresident to state of residence. Amendment effective April 5, 1999.

Cross-References

Residence — rules for determining, 1-1-215.

53-21-135. Terminated. Sec. 1, Ch. 541, L. 1989.

History: En. Sec. 12, Ch. 376, L. 1987.

53-21-136. Terminated. Sec. 1, Ch. 541, L. 1989.
History: En. Sec. 13, Ch. 376, L. 1987.

53-21-137. Terminated. Sec. 1, Ch. 541, L. 1989.
History: En. Sec. 14, Ch. 376, L. 1987.

53-21-138. Diversion of certain persons suffering from mental disorders from detention center. (1) The sheriff or administrator of a detention center in each county shall require screening of inmates to identify persons accused of minor misdemeanor offenses who appear to be suffering from mental disorders and who may require commitment, as defined in 53-21-102.

(2) If as a result of screening and observation it is believed that an inmate is suffering from a mental disorder and may require commitment, the sheriff or administrator of the detention center shall:

(a) request services from a crisis intervention program established by the department, as provided for in 53-21-139;

(b) refer the inmate to the nearest community mental health center, as defined in 53-21-201; or

(c) transfer the inmate to a private mental health facility or hospital equipped to provide treatment and care of persons who are suffering from a mental disorder and who require commitment.

(3) As used in this section, the term "minor misdemeanor offense" includes but is not limited to a nonserious misdemeanor, such as criminal trespass to property, loitering, vagrancy, disorderly conduct, and disturbing the public peace.

(4) A person intoxicated by drugs or alcohol who is accused of a minor misdemeanor offense may be detained in a jail until the level of intoxication is reduced to the point that screening for a mental disorder and the need for commitment can be performed.

History: En. Sec. 3, Ch. 636, L. 1991; amd. Sec. 2, Ch. 312, L. 1993; amd. Sec. 488, Ch. 546, L. 1995; amd. Sec. 28, Ch. 490, L. 1997; amd. Sec. 4, Ch. 247, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 247 in (1) and (2) substituted "detention center" for "jail"; and made minor changes in style. Amendment effective April 5, 1999.

Cross-References

Mileage and expenses of Sheriff for delivery of mentally ill persons, 7-32-2144.

Definition of misdemeanor, 45-2-101.

53-21-139. Crisis intervention programs. (1) The department shall, subject to available appropriations, establish crisis intervention programs. The programs must be designed to provide 24-hour emergency admission and care of persons suffering from a mental disorder and requiring commitment in a temporary, safe environment in the community as an alternative to placement in jail.

(2) The department shall provide information and technical assistance regarding needed services and assist counties in developing county plans for crisis intervention services and for the provision of alternatives to jail placement.

(3) The department may provide crisis intervention programs as:

(a) a rehabilitative service under 53-6-101(3)(j); and

(b) a targeted case management service authorized in 53-6-101(3)(n).

History: **En. Sec. 4, Ch. 636, L. 1991; amd. Sec. 489, Ch. 546, L. 1995; amd. Sec. 29, Ch. 490, L. 1997.**

53-21-140 reserved.

53-21-141. Civil and legal rights of person committed. (1) Unless specifically stated in an order by the court, a person involuntarily committed to a facility for a period of evaluation or treatment does not forfeit any legal right or suffer any legal disability by reason of the provisions of this part except insofar as it may be necessary to detain the person for treatment, evaluation, or care. All communication between an alleged mentally ill person and a professional person is privileged under normal privileged communication rules unless it is clearly explained to the person in advance that the purpose of an interview is for evaluation and not treatment.

(2) Whenever a person is committed to a mental health facility for a period of 3 months or longer, the court ordering the commitment may make an order stating specifically any legal rights which are denied the respondent and any legal disabilities which are imposed on him. As part of its order, the court may appoint a person to act as conservator of the respondent's property. Any conservatorship created pursuant to this section terminates upon the conclusion of the involuntary commitment if not sooner terminated by the court. A conservatorship or guardianship extending beyond the period of involuntary commitment may not be created except according to the procedures set forth under Montana law for the appointment of conservators and guardians generally. In the case of a person admitted to a program or facility for the purpose of receiving mental health services, an individual employed by or receiving remuneration from the program or facility may not act as the person's guardian or representative unless the program or facility can demonstrate that no other person is available or willing to act as the person's guardian or representative.

(3) A person who has been committed to a mental health facility pursuant to this part is automatically restored upon the termination of the commitment to all of his civil and legal rights which may have been lost when he was committed. This subsection does not affect, however, a guardianship or conservatorship created independently of the commitment proceedings according to the provisions of Montana law relating to the appointment of conservators and guardians generally. A person who leaves a mental health facility following a period of evaluation and treatment shall be given a written statement setting forth the substance of this subsection.

(4) A person committed to a mental health facility prior to July 1, 1975, enjoys all the rights and privileges of a person committed after that date.

History: **En. 38-1313 by Sec. 13, Ch. 466, L. 1975; amd. Sec. 11, Ch. 546, L. 1977; R.C.M. 1947, 38-1313(1) thru (4); amd. Sec. 11, Ch. 547, L. 1979; amd. Sec. 2, Ch. 579, L. 1991.**

Cross-References

Doctor-patient privilege, 26-1-805.

Psychologist-client privilege, 26-1-807.

Persons under disability guardianship and conservatorship, Title 72, ch. 5.

53-21-142. Rights of persons admitted to facility. Patients admitted to a mental health facility, whether voluntarily or involuntarily, shall have the following rights:

(1) Patients have a right to privacy and dignity.

(2) Patients have a right to the least restrictive conditions necessary to achieve the purposes of commitment. Patients must be accorded the right to appropriate treatment and related services in a setting and under conditions that:

(a) are the most supportive of the patient's personal liberty; and

(b) restrict the patient's liberty only to the extent necessary and consistent with the patient's treatment need, applicable requirements of law, and judicial orders.

(3) Patients shall have the same rights to visitation and reasonable access to telephone communications, including the right to converse with others privately, except to the extent that the professional person responsible for formulation of a particular patient's treatment plan writes an order imposing special restrictions. The written order must be renewed after each periodic review of the treatment plan if any restrictions are to be continued. Patients shall have an unrestricted right to visitation with attorneys, with spiritual counselors, and with private physicians and other professional persons.

(4) Patients shall have an unrestricted right to send sealed mail. Patients shall have an unrestricted right to receive sealed mail from their attorneys, private physicians and other professional persons, the mental disabilities board of visitors, courts, and government officials. Patients shall have a right to receive sealed mail from others except to the extent that a professional person responsible for formulation of a particular patient's treatment plan writes an order imposing special restrictions on receipt of sealed mail. The written order must be renewed after each periodic review of the treatment plan if any restrictions are to be continued.

(5) Patients have an unrestricted right to have access to letter-writing materials, including postage, and have a right to have staff members of the facility assist persons who are unable to write, prepare, and mail correspondence.

(6) Patients have a right to wear their own clothes and to keep and use their own personal possessions, including toilet articles, except insofar as such clothes or personal possessions may be determined by a professional person in charge of the patient's treatment plan to be dangerous or otherwise inappropriate to the treatment regimen. The facility has an obligation to supply an adequate allowance of clothing to any patients who do not have suitable clothing of their own. Patients shall have the opportunity to select from various types of neat, clean, and seasonable clothing. Such clothing shall be considered the patient's throughout his stay at the facility. The facility shall make provision for the laundering of patient clothing.

(7) Patients have the right to keep and be allowed to spend a reasonable sum of their own money.

(8) Patients have the right to religious worship. Provisions for such worship shall be made available to all patients on a nondiscriminatory basis. No individual shall be required to engage in any religious activities.

(9) Patients have a right to regular physical exercise several times a week. Moreover, it shall be the duty of the facility to provide facilities and equipment for such exercise. Patients have a right to be outdoors at regular and frequent intervals in the absence of contrary medical considerations.

(10) Patients have the right to be provided, with adequate supervision, suitable opportunities for interaction with members of the opposite sex except to the extent that a professional person in charge of the patient's treatment plan writes an order stating that such interaction is inappropriate to the treatment regimen.

(11) Patients have a right to receive prompt and adequate medical treatment for any physical ailments. In providing medical care, the mental health facility shall take advantage of whatever community-based facilities are appropriate and available and shall coordinate the patient's treatment for mental illness with his medical treatment.

(12) Patients have a right to a diet that will provide at a minimum the recommended daily dietary allowances as developed by the national academy of sciences. Provisions shall be made for special therapeutic diets and for substitutes at the request of the patient or the friend of respondent in accordance with the religious requirements of any patient's faith. Denial of a nutritionally adequate diet shall not be used as punishment.

(13) Patients have a right to a humane psychological and physical environment within the mental health facilities. These facilities shall be designed to afford patients with comfort and safety, promote dignity, and ensure privacy. The facilities shall be designed to make a positive contribution to the efficient attainment of the treatment goals set for the patient. In order to assure the accomplishment of this goal:

(a) regular housekeeping and maintenance procedures which will ensure that the facility is maintained in a safe, clean, and attractive condition shall be developed and implemented;

(b) there must be special provision made for geriatric and other nonambulatory patients to assure their safety and comfort, including special fittings on toilets and wheelchairs. Appropriate provision shall be made to permit nonambulatory patients to communicate their needs to the facility staff.

(c) pursuant to an established routine maintenance and repair program, the physical plant of every facility shall be kept in a continuous state of good repair and operation in accordance with the needs of the health, comfort, safety, and well-being of the patients;

(d) every facility must meet all fire and safety standards established by the state and locality. In addition, any hospital shall meet such provisions of the life safety code of the national fire protection association as are applicable to hospitals. Any hospital shall meet all standards established by the state for general hospitals insofar as they are relevant to psychiatric facilities.

(14) A patient at a facility has the right:

(a) to be informed of the rights described in this section at the time of his admission and periodically thereafter, in language and terms appropriate to the patient's condition and ability to understand;

(b) to assert grievances with respect to infringement of the rights described in this section, including the right to have a grievance considered in a fair and timely manner according to an impartial grievance procedure that must be provided for by the facility; and

(c) to exercise the rights described in this section without reprisal and may not be denied admission to the facility as reprisal for the exercise of the rights described in this section.

(15) In order to assist a person admitted to a program or facility in the exercise or protection of the patient's rights, the patient's attorney, advocate, or legal representatives shall have reasonable access to:

(a) the patient;

(b) the program or facility areas where the patient has received treatment or has resided or the areas to which he has had access; and

(c) pursuant to the written authorization of the patient, records and information pertaining to the patient's diagnosis, treatment, and related services.

(16) A person admitted to a facility shall have access to any available individual or service that provides advocacy for the protection of the person's rights and that assists the person in understanding, exercising, and protecting his rights as described in this section.

(17) This section may not:

(a) obligate a professional person to administer treatment contrary to the professional's clinical judgment;

(b) prevent a facility from discharging a patient for whom appropriate treatment, consistent with the clinical judgment of a professional person responsible for the patient's treatment, is or has become impossible to administer because of the patient's refusal to consent to the treatment;

(c) require a facility to admit a person who has, on prior occasions, repeatedly withheld consent to appropriate treatment; or

(d) obligate a facility to treat a person admitted to the facility solely for diagnostic evaluation.

History: En. 38-1317 by Sec. 17, Ch. 466, L. 1975; R.C.M. 1947, 38-1317; amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 3, Ch. 579, L. 1991.

Cross-References

Freedom of religion, Art. II, sec. 5, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Adult rights, Art. II, sec. 14, Mont. Const.

53-21-143. Right not to be fingerprinted. No person admitted to or in a mental health facility shall be fingerprinted unless required by other provisions of law.

History: En. 38-1315 by Sec. 15, Ch. 466, L. 1975; R.C.M. 1947, 38-1315.

53-21-144. Rights concerning photographs. (1) A person admitted to a mental health facility may be photographed for the clinical or administrative purposes of the facility. The photographs are confidential. Photographs may be released to a law enforcement agency when needed to aid in the search for a person who has left a facility without authorization from the facility's medical staff and when it is determined that the person is a self-threat or self-danger or a threat or danger to others at the time that the person left the facility. A law enforcement agency may not subsequently release photographs to the public or other persons unless authorized by a court order.

(2) Other nonmedical photographs may not be taken or used without consent of the patient or, if applicable, the patient's legal guardian or without a court order.

History: En. 38-1316 by Sec. 16, Ch. 466, L. 1975; R.C.M. 1947, 38-1316; amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 4, Ch. 579, L. 1991; amd. Sec. 30, Ch. 490, L. 1997.

53-21-145. Right to be free from unnecessary or excessive medication. Patients have a right to be free from unnecessary or excessive medication. A medication may not be administered unless at the written order of a physician. The attending physician is responsible for all medication given or administered to a patient. The use of medication may not exceed standards of use that are advocated by the United States food and drug administration. Notation of each individual's medication must be kept in the individual's medical records. The department of public health and human services shall adopt rules governing attending physician review of the drug regimen of each patient under the physician's care in a mental health facility, except that the drug regimen of inpatients in hospitals must be reviewed no less than weekly. Except in the case of outpatients, all prescriptions must be written with a termination date, which may not exceed 30 days. Medication may not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with the patient's treatment program.

History: En. 38-1319 by Sec. 19, Ch. 466, L. 1975; R.C.M. 1947, 38-1319; amd. Sec. 1, Ch. 429, L. 1987; amd. Sec. 166, Ch. 418, L. 1995; amd. Sec. 490, Ch. 546, L. 1995.

53-21-146. Right to be free from physical restraint and isolation. Patients have a right to be free from physical restraint and isolation. Except for emergency situations in which it is likely that patients could harm themselves or others and in which less restrictive means of restraint are not feasible, patients may be physically restrained or placed in isolation only on a professional person's written order which explains the rationale for such action. The written order may be entered only after the professional person has personally seen the patient concerned and evaluated whatever episode or situation is said to call for restraint or isolation. Emergency use of restraints or isolation shall be for no more than 1 hour, by which time a professional person shall have been consulted and shall have entered an appropriate order in writing. Such written order shall be effective for no more than 24 hours and must be renewed if restraint and isolation are to be continued. Whenever a patient is subject to restraint or isolation, adequate care shall be taken to monitor his physical and psychiatric condition and to provide for his physical needs and comfort. Physical restraint may not be used as punishment, for the convenience of the staff, or as a substitute for a treatment program.

History: En. 38-1320 by Sec. 20, Ch. 466, L. 1975; R.C.M. 1947, 38-1320; amd. Sec. 5, Ch. 579, L. 1991.

53-21-147. Right not to be subjected to experimental research. (1) Patients have a right not to be subjected to experimental research without the express and informed consent of the patient, if the patient is able to give consent, and of the patient's guardian, if any, and the friend of respondent appointed by the court after opportunities for consultation with independent specialists and with legal counsel. If there is no friend of respondent or if the friend of respondent appointed by the court is no longer available, then a friend of respondent who is in no way connected with the facility, the department, or the research project must be appointed prior to the involvement of the patient in any experimental research. At least 10 days prior to the commencement of experimental research, the facility shall send notice of intent to involve the patient in experimental research to the patient, the patient's next of kin, if known, the patient's legal guardian, if any, the attorney who most recently represented the patient, and the friend of respondent appointed by the court.

(2) The proposed research must have been reviewed and approved by the mental disabilities board of visitors before consent may be sought. Prior to approval, the board shall determine that the research complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health and human services for projects supported by that agency.

(3) A patient has the right to appropriate protection before participating in an experimental treatment, including the right to a reasonable explanation of the procedure to be followed, expected benefits, relative advantages, and the potential risks and discomforts of any experimental treatment. A patient has the right to revoke at any time consent to an experimental treatment.

History: En. 38-1321 by Sec. 21, Ch. 466, L. 1975; R.C.M. 1947, 38-1321; amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 6, Ch. 579, L. 1991; amd. Sec. 72, Ch. 10, L. 1993.

53-21-148. Right not to be subjected to hazardous treatment. Patients have a right not to be subjected to treatment procedures such as lobotomy, adversive reinforcement conditioning, or other unusual or hazardous treatment procedures without their express and informed consent after consultation with counsel, the legal guardian, if any, the friend of respondent appointed by the court, and any other interested party of the patient's choice. At least one of those consulted must consent to the treatment, along with the patient's counsel. If there is no friend of respondent or if the friend of respondent appointed by the court is no longer available, then a friend of respondent who is in no way connected with the facility or with the department shall be appointed before any such treatment procedure can be employed. At least 10 days prior to the commencement of the extraordinary treatment program, the facility shall send notice of intent to employ extraordinary treatment procedures to the patient, his next of kin, if known, the legal guardian, if any, the attorney who most recently represented him, and the friend of respondent appointed by the court.

History: En. 38-1322 by Sec. 22, Ch. 466, L. 1975; amd. Sec. 12, Ch. 546, L. 1977; R.C.M. 1947, 38-1322; amd. Sec. 14, Ch. 547, L. 1979.

53-21-149 through 53-21-160 reserved.

53-21-161. Qualifications of professional persons. In every mental health facility to which a person is admitted pursuant to this part:

(1) each professional person and other staff member employed by the facility shall meet all certification requirements promulgated by the department;

(2) all nonprofessional staff members who have not had prior clinical experience in a mental institution shall have substantial orientation training;

(3) staff members on all levels shall have regularly scheduled inservice training;

(4) each nonprofessional staff member shall be under the direct supervision of a professional person.

History: En. 38-1323 by Sec. 23, Ch. 466, L. 1975; R.C.M. 1947, 38-1323.

Cross-References

Certification of professional persons, 53-21-106.

53-21-162. Establishment of patient treatment plan — patient's rights. (1) Each patient admitted as an inpatient to a mental health facility must have a comprehensive physical and mental examination and review of behavioral status within 48 hours after admission to the mental health facility.

(2) Each patient must have an individualized treatment plan. This plan must be developed by appropriate professional persons, including a psychiatrist, and must be implemented no later than 10 days after the patient's admission. Each individualized treatment plan must contain:

(a) a statement of the nature of the specific problems and specific needs of the patient;

(b) a statement of the least restrictive treatment conditions necessary to achieve the purposes of hospitalization;

(c) a description of treatment goals, with a projected timetable for their attainment;

(d) a statement and rationale for the plan of treatment for achieving these goals;

(e) a specification of staff responsibility for attaining each treatment goal;

(f) criteria for release to less restrictive treatment conditions; and

(g) a notation of any therapeutic tasks and labor to be performed by the patient.

(3) Overall development, implementation, and supervision of the treatment plan must be assigned to an appropriate professional person.

(4) The inpatient mental health facility shall periodically reevaluate the patient and revise the individualized treatment plan based on changes in the patient's condition. At a minimum, the treatment plan must be reviewed:

(a) at the time of any transfer within the facility;

(b) at the time of discharge;

(c) upon any major change in the patient's condition;

(d) at the conclusion of the initial estimated length of stay and subsequent estimated lengths of stay;

(e) no less than every 90 days; and

(f) at each of the times specified in subsections (4)(a) through (4)(e), by a treatment team that includes at least one professional person who is not primarily responsible for the patient's treatment plan.

(5) A patient has the right:

(a) to ongoing participation, in a manner appropriate to the patient's capabilities, in the planning of mental health services to be provided and in the revision of the plan;

(b) to a reasonable explanation of the following, in terms and language appropriate to the patient's condition and ability to understand:

(i) the patient's general mental condition and, if given a physical examination, the patient's physical condition;

(ii) the objectives of treatment;

(iii) the nature and significant possible adverse effects of recommended treatments;

(iv) the reasons why a particular treatment is considered appropriate;

(v) the reasons why access to certain visitors may not be appropriate; and

(vi) any appropriate and available alternative treatments, services, or providers of mental health services; and

(c) not to receive treatment established pursuant to the treatment plan in the absence of the patient's informed, voluntary, and written consent to the treatment, except treatment:

(i) during an emergency situation if the treatment is pursuant to or documented contemporaneously by the written order of a responsible mental health professional; or

(ii) permitted under the applicable law in the case of a person committed to a facility by a court.

(6) In the case of a patient who lacks the capacity to exercise the right to consent to treatment described in subsection (5)(c), the right must be exercised on behalf of the patient by a guardian appointed pursuant to the provisions of Title 72, chapter 5.

(7) The department shall develop procedures for initiating limited guardianship proceedings in the case of a patient who appears to lack the capacity to exercise the right to consent described in subsection (5)(c).

History: En. 38-1324 by Sec. 24, Ch. 466, L. 1975; amd. Sec. 13, Ch. 546, L. 1977; R.C.M. 1947, 38-1324; amd. Sec. 7, Ch. 579, L. 1991; amd. Sec. 1, Ch. 293, L. 1993.

53-21-163. Examination following commitment. No later than 30 days after a patient is committed to a mental health facility, the professional person in charge of the facility or his appointed, professionally qualified agent shall reexamine the committed patient and shall determine whether he continues to require commitment to the facility and whether a treatment plan complying with this part has been implemented. If the patient no longer requires commitment to the facility in accordance with the standards for commitment, he must be released immediately unless he agrees to continue with treatment on a voluntary basis. If for sound professional reasons a treatment plan has not been implemented, this fact shall be reported immediately to the professional person in charge of the facility, the director of the department, the mental disabilities board of visitors, and the patient's counsel.

History: En. 38-1325 by Sec. 25, Ch. 466, L. 1975; amd. Sec. 14, Ch. 546, L. 1977; R.C.M. 1947, 38-1325.

53-21-164. Repealed. Sec. 15, Ch. 14, Sp. L. June 1986.

History: En. 38-1327 by Sec. 27, Ch. 466, L. 1975; R.C.M. 1947, 38-1327; amd. Sec. 13, Ch. 363, L. 1983.

53-21-165. Records to be maintained. Complete patient records must be kept by the mental health facility for the length of time required by rules established by the department of public health and human services. All records kept by the mental health facility must be available to any person authorized by the patient in writing to receive these records and upon approval of the authorization by the board. The records must also be made available to any attorney charged with representing the patient or any professional person charged with evaluating or treating the patient. These records must include:

(1) identification data, including the patient's legal status;

(2) a patient history, including but not limited to:

(a) family data, educational background, and employment record;

(b) prior medical history, both physical and mental, including prior hospitalization;

(3) the chief complaints of the patient and the chief complaints of others regarding the patient;

(4) an evaluation that notes the onset of illness, the circumstances leading to admission, attitudes, behavior, estimate of intellectual functioning, memory functioning, orientation, and an inventory of the patient's assets in descriptive rather than interpretative fashion;

(5) a summary of each physical examination that describes the results of the examination;

(6) a copy of the individual treatment plan and any modifications to the plan;

(7) a detailed summary of the findings made by the reviewing professional person after each periodic review of the treatment plan, required under 53-21-162(4), that analyzes the successes and failures of the treatment program and includes recommendations for appropriate modification of the treatment plan;

(8) a copy of the individualized discharge plan and any modifications to the plan and a summary of the steps that have been taken to implement that plan;

(9) a medication history and status that includes the signed orders of the prescribing physician. The staff person administering the medication shall indicate by signature that orders have been carried out.

(10) a summary of each significant contact by a professional person with the patient;

(11) documentation of the implementation of the treatment plan;

(12) documentation of all treatment provided to the patient;

(13) chronological documentation of the patient's clinical course;

(14) descriptions of any changes in the patient's condition;

(15) a signed order by a professional person for any restrictions on visitations and communications;

(16) a signed order by a professional person for any physical restraints and isolation;

(17) a detailed summary of any extraordinary incident in the facility involving the patient, to be entered by a staff member noting that the staff member has personal knowledge of the incident or specifying any other source of information. The summary of the incident must be initialed within 24 hours by a professional person.

(18) a summary by the professional person in charge of the facility or by an appointed agent of the determination made after the 30-day review provided for in 53-21-163.

History: En. 38-1328 by Sec. 28, Ch. 466, L. 1975; amd. Sec. 15, Ch. 546, L. 1977; R.C.M. 1947, 38-1328; amd. Sec. 12, Ch. 547, L. 1979; amd. Sec. 1, Ch. 333, L. 1987; amd. Sec. 2, Ch. 293, L. 1993; amd. Sec. 167, Ch. 418, L. 1995; amd. Sec. 491, Ch. 546, L. 1995.

53-21-166. Records to be confidential — exceptions. All information obtained and records prepared in the course of providing any services under this part to individuals under any provision of this part shall be confidential and privileged matter and shall remain confidential and privileged after the individual is discharged from the facility. Except as provided in Title 50, chapter 16, part 5, information and records may be disclosed only:

(1) in communications between qualified professionals in the provision of services or appropriate referrals;

(2) when the recipient of services designates persons to whom information or records may be released, provided that if a recipient of services is a ward and his guardian or conservator designates in writing persons to whom records or information may be disclosed, such designation shall be valid in lieu of the designation by the recipient; except that nothing in this section shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given to him in confidence by members of a patient's family;

(3) to the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical assistance to which he may be entitled;

(4) for research if the department has promulgated rules for the conduct of research; such rules shall include but not be limited to the requirement that all researchers must sign an oath of confidentiality;

(5) to the courts as necessary to the administration of justice;

(6) to persons authorized by an order of court, after notice and opportunity for hearing to the person to whom the record or information pertains and the custodian of the record or information pursuant to the rules of civil procedure;

(7) to members of the mental disabilities board of visitors or their agents when necessary to perform their functions as set out in 53-21-104.

History: En. 38-1329 by Sec. 29, Ch. 466, L. 1975; R.C.M. 1947, 38-1329; amd. Sec. 28, Ch. 632, L. 1987; amd. Sec. 8, Ch. 579, L. 1991.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Public records, Title 2, ch. 6.

Uniform Health Care Information Act, Title 50, ch. 16, part 5.

53-21-167. Patient labor. The following rules shall govern patient labor:

(1) No patient shall be required to perform labor which involves the operation and maintenance of a facility or for which the facility is under contract with an outside organization. Privileges or release from the facility shall not be conditioned upon the performance of labor covered by this provision. Patients may voluntarily engage in such labor if the labor is compensated in accordance with the minimum wage laws of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, as amended.

(2) (a) Patients may be required to perform therapeutic tasks which do not involve the operation and maintenance of the facility, provided the specific task or any change in assignment is:

(i) an integrated part of the patient's treatment plan and approved as a therapeutic activity by a professional person responsible for supervising the patient's treatment; and

(ii) supervised by a staff member to oversee the therapeutic aspects of the activity.

(b) Patients may voluntarily engage in therapeutic labor for which the facility would otherwise have to pay an employee, provided the specific labor or any change in labor assignment is:

(i) an integrated part of the patient's treatment plan and approved as a therapeutic activity by a professional person responsible for supervising the patient's treatment;

(ii) supervised by a staff member to oversee the therapeutic aspects of the activity; and

(iii) compensated in accordance with the minimum wage laws of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, as amended.

(3) If any patient performs therapeutic labor which involves the operation and maintenance of a facility but due to physical or mental disability is unable to perform the labor as efficiently as a person not so physically or mentally disabled, then the patient may be compensated at a rate which bears the same approximate relation to the statutory minimum wage as his ability to perform that particular job bears to the ability of a person not so afflicted.

(4) Patients may be required to perform tasks of a personal housekeeping nature, such as the making of one's own bed.

(5) Deductions or payments for care and other charges shall not deprive a patient of a reasonable amount of the compensation received pursuant to this section for personal and incidental purchases and expenses.

History: En. 38-1318 by Sec. 18, Ch. 466, L. 1975; R.C.M. 1947, 38-1318.

Cross-References

Arranging for labor of institutional resident prohibited, 53-1-303.

53-21-168. Statement of rights to be furnished and posted. Each patient shall promptly upon his admission receive in language he understands a written statement of all of his rights under this part, including the right to treatment, the right to the development of a treatment plan, the right to and the availability of legal counsel, and the rules for patient labor. In addition, a copy of the foregoing statement shall be posted in each ward.

History: En. 38-1331 by Sec. 31, Ch. 466, L. 1975; amd. Sec. 17, Ch. 546, L. 1977; R.C.M. 1947, 38-1331.

53-21-169. Protection and advocacy system — designation and authority. (1) A protection and advocacy system for individuals with a significant mental illness or emotional impairment is designated by the governor and may be administered in the state under the provisions of 42 U.S.C. 10801 through 10851. An eligible mental health protection and advocacy system under the provisions of 42 U.S.C. 10801 through 10851 must have as its primary goals:

(a) the protection and advocacy of the rights of mentally ill individuals who are defined in 42 U.S.C. 10802 as individuals with a significant mental illness or emotional impairment; and

(b) the investigation of incidents of abuse and neglect, as defined in 42 U.S.C. 10802, of mentally ill individuals.

(2) Pursuant to 42 U.S.C. 10801 and 10802, the protection and advocacy system may:

(a) investigate incidents of abuse and neglect of mentally ill individuals;

(b) pursue administrative, legal, and other appropriate remedies to ensure the protection of mentally ill individuals who are residents of the state and are receiving care or treatment in the state;

(c) have access to all mentally ill individuals and all facilities, wards, and living quarters as necessary to fulfill the goals described in subsection (1); and

(d) pursuant to 42 U.S.C. 10801 through 10851 and Title 50, chapter 16, part 5, have access to records, including:

(i) reports prepared by the staff of a mental health care and treatment facility;

(ii) reports prepared by an agency investigating reports of abuse, neglect, and injury occurring at a facility and that describe the incidents and the steps taken to investigate the reports; and

(iii) discharge planning records.

(3) All information obtained under this section must be kept confidential pursuant to 42 U.S.C. 10806.

(4) The protection and advocacy system described in this section is independent of any public or private agency that provides treatment or services to the mentally ill.

History: En. Sec. 1, Ch. 579, L. 1991.

Cross-References

Mental Disabilities Board of Visitors — composition — allocation, 2-15-211.

Powers and duties of Mental Disabilities Board of Visitors, 53-21-104.

53-21-170 through 53-21-179 reserved.

53-21-180. Discharge plan. Each patient admitted as an inpatient to a mental health facility must have an individualized discharge plan developed within 10 days after admission. The discharge plan must be updated as necessary. Each individualized discharge plan must contain:

(1) an anticipated discharge date;

(2) criteria for discharge;

(3) identification of the facility staff member responsible for discharge planning;

(4) identification of the community-based agency or individual who is assisting in arranging postdischarge services;

(5) referrals for financial assistance needed by the patient upon discharge; and

(6) other information necessary to ensure an appropriate discharge and adequate postdischarge services.

History: En. Sec. 3, Ch. 293, L. 1993; amd. Sec. 5, Ch. 247, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 247 inserted (5) requiring individual discharge plan to include referrals for financial assistance needed by patient upon discharge; and made minor changes in style. Amendment effective April 5, 1999.

53-21-181. Discharge during or at end of initial commitment period — patient's right to referral. (1) At any time within the 3-month period provided for in 53-21-127(2), the patient may be discharged on the written order of the professional person in charge of him. In the event the patient is not discharged within the 3-month period and if the term is not extended as provided for in 53-21-128, he shall be discharged by the facility at the end of 3 months without further order of the court. Notice of the discharge shall be filed with the court and the county attorney at least 5 days prior to the discharge.

(2) Upon being discharged, each patient has a right to be referred, as appropriate, to other providers of mental health services.

History: En. 38-1306 by Sec. 6, Ch. 466, L. 1975; amd. Sec. 6, Ch. 546, L. 1977; R.C.M. 1947, 38-1306(2); amd. Sec. 9, Ch. 579, L. 1991.

53-21-182. Court-ordered release to alternative placement or treatment. At any time during the patient's commitment, the court may, on its own initiative or upon application of the professional person in charge of the patient, the patient, the patient's next of kin, the patient's attorney, a third party responsible for payment for the care of the patient, or the friend of respondent appointed by the court, order the patient to be placed in the care and custody of relatives or guardians or to be provided outpatient therapy or other appropriate placement or treatment.

History: En. 38-1306 by Sec. 6, Ch. 466, L. 1975; amd. Sec. 6, Ch. 546, L. 1977; R.C.M. 1947, 38-1306(5); amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 31, Ch. 490, L. 1997.

53-21-183. Release conditioned on receipt of outpatient care. (1) When, in the opinion of the professional person in charge of a mental health facility providing involuntary treatment, the committed person can be appropriately served by outpatient care prior to the expiration of the period of commitment, then outpatient care may be required as a condition for early release for a period which, when added to the inpatient treatment period, except as provided in 53-21-198, may not exceed the period of commitment. If the mental health facility designated to provide outpatient care is other than the facility providing involuntary treatment, the outpatient facility so designated must agree in writing to assume such responsibility.

(2) The mental health facility designated to provide outpatient care or the professional person in charge of the patient's case may modify the conditions for continued release when the modification is in the best interest of the patient. This includes the authorization to transfer the patient to another mental health facility designated to provide outpatient care, provided the transfer is in the best interest of the patient and the outpatient facility so designated agrees in writing to assume responsibility. Notice of an intended transfer shall be given to the professional person in charge of the mental health facility that provided the involuntary treatment.

(3) Notice in writing to the court which committed the patient for treatment and the county attorney who initiated the action shall be provided by the professional person in charge of him at least 5 days prior to his release from commitment or outpatient care.

(4) This section and 53-21-195 through 53-21-198 do not apply to a temporary release, certified as such by the professional person in charge of the mental health facility, from the facility for the purposes of a home visit not exceeding 30 days.

History: En. 38-1308 by Sec. 8, Ch. 466, L. 1975; amd. Sec. 8, Ch. 546, L. 1977; R.C.M. 1947, 38-1308; amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 1, Ch. 541, L. 1985.

53-21-184. Patients for whom release and discharge provisions inapplicable. The release and discharge provisions of this part shall not apply to any patient held upon an order of court or judge in a proceeding arising out of a criminal act.

History: En. Sec. 1, Ch. 145, L. 1941; R.C.M. 1947, 38-501.

Cross-References

Mental competency of accused, Title 46, ch. 14.

53-21-185. Care and treatment following release. The department and its agents have an affirmative duty to provide adequate transitional treatment and care for all patients released after a period of involuntary confinement. Transitional care and treatment possibilities include but are not limited to psychiatric day care, treatment in the home by a visiting therapist, nursing home or extended care, a halfway house, outpatient treatment, and treatment in the psychiatric ward of a general hospital.

History: En. 38-1326 by Sec. 26, Ch. 466, L. 1975; R.C.M. 1947, 38-1326.

53-21-186. Support of patient conditionally released. When a mental health facility conditionally releases a patient committed to its care, it is not liable for his support while conditionally released. Liability devolves upon the legal guardian, parent, or person under whose care the patient is placed when conditionally released or upon any other person legally liable for his support. The public welfare officials of the county where the patient resides or is found are responsible for providing relief and care for a conditionally released patient who is unable to maintain himself or who is unable to secure support from the person under whose care he was placed on convalescent leave, like any other person in need of relief and care, under the public assistance laws.

History: En. Sec. 6, Ch. 145, L. 1941; amd. Sec. 1, Ch. 149, L. 1953; amd. Sec. 5, Ch. 152, L. 1957; amd. Sec. 32, Ch. 120, L. 1974; amd. Sec. 34, Ch. 466, L. 1975; amd. Sec. 3, Ch. 37, L. 1977; R.C.M. 1947, 38-506.

53-21-187. Clothing for patients discharged or conditionally released. A patient may not be discharged or conditionally released from a mental health facility without suitable clothing adapted to the season in which he is discharged.

History: En. Sec. 7, Ch. 145, L. 1941; amd. Sec. 6, Ch. 152, L. 1957; amd. Sec. 33, Ch. 120, L. 1974; amd. Sec. 35, Ch. 466, L. 1975; R.C.M. 1947, 38-507.

Cross-References

Clothing purchases, 18-4-133.

53-21-188. Repealed. Sec. 7, Ch. 247, L. 1999.

History: En. Sec. 2, Ch. 165; L. 1943; amd. Sec. 24, Ch. 266, L. 1963; amd. Sec. 7, Ch. 120, L. 1974; amd. Sec. 32, Ch. 466, L. 1975; amd. Sec. 1, Ch. 37, L. 1977; R.C.M. 1947, 38-110; amd. Sec. 13, Ch. 547, L. 1979.

53-21-189. Fact of evaluation or treatment not to be used for discrimination. No person who has received evaluation or treatment under any of the provisions of this part may be discriminated against because of that status. For purposes of this section, “discrimination” means giving any unfavorable weight to the fact of hospitalization or outpatient care and treatment unrelated to a person’s present capacity to meet standards applicable to all persons.

History: En. 38-1313 by Sec. 13, Ch. 466, L. 1975; amd. Sec. 11, Ch. 546, L. 1977; R.C.M. 1947, 38-1313(part).

Cross-References

Freedom from discrimination, 49-1-102.

Illegal discrimination, Title 49, ch. 2.

53-21-190. Fact of evaluation or treatment not to be used in subsequent court proceeding — exception. The fact that a person has received evaluation and treatment, whether voluntarily or involuntarily, at a mental health facility may not be admitted into evidence in a subsequent proceeding for involuntary commitment or for the appointment of a guardian or conservator unless it is necessary to a determination of the present condition of the respondent or the prognosis for treatment in the present case and the judge determines that the need for the evidence outweighs the prejudicial effect of its admission.

History: En. 38-1313 by Sec. 13, Ch. 466, L. 1975; amd. Sec. 11, Ch. 546, L. 1977; R.C.M. 1947, 38-1313(part).

Cross-References

Exclusion of relevant evidence on grounds of prejudice, Rule 403, M.R.Ev. (see Title 26, ch. 10).

53-21-191 through 53-21-194 reserved.

53-21-195. Rehospitalization of patient conditionally released from inpatient treatment facilities — petition. (1) A proceeding for the rehospitalization of a patient conditionally released from an inpatient mental health facility pursuant to 53-21-182 or 53-21-183 is commenced by the filing of a written petition in any district court by the county attorney, the professional person in charge of the patient's case, or the patient's next of kin. Upon the filing of a petition under this subsection, the clerk of court shall notify each district court that committed the patient for the period of the patient's present hospitalization under 53-21-127 or 53-21-128 and request that the file of the earlier proceeding or proceedings be forwarded to the clerk. The file or files must be promptly forwarded.

(2) The patient has the rights set forth in 53-21-115 in a proceeding under this section.

(3) The petition must state:

(a) the patient's name and last-known address;

(b) the name and address of the patient's spouse, next of kin, attorney, or the friend of respondent appointed by the court, if any and if this information is reasonably ascertainable;

(c) that the patient has been determined by the district court to be suffering from a mental disorder and requiring commitment within the meaning of this part and is presently under a valid order of commitment pursuant to 53-21-127 or 53-21-128;

(d) a simple and precise statement of the facts showing that the patient has violated a condition of the release, that the violation has caused a deterioration of the patient's mental disorder, and that as a result of this deterioration, the patient can no longer be appropriately served by outpatient care; and

(e) a statement of the rights of the respondent, including those set forth in 53-21-115, which must be in conspicuous print and identified by a suitable heading.

(4) The petition must be filed with the clerk of court, who shall immediately notify the judge.

(5) The judge shall issue notice of the time and place of the hearing on the petition. The hearing must be held no more than 5 days after the date that the petition is filed, including weekends and holidays, unless the fifth day falls upon

a weekend or holiday or unless additional time is requested by the patient. Further, the judge shall ensure that the notice and copy of the petition are immediately hand-delivered to the patient, to the patient's friend of respondent, if any, and to the patient's counsel.

History: **En. Sec. 2, Ch. 541, L. 1985; amd. Sec. 32, Ch. 490, L. 1997.**

53-21-196. Detention of conditionally released patient pending hearing. The court may not order detention of the conditionally released patient pending the hearing, except as permitted under 53-21-124.

History: **En. Sec. 3, Ch. 541, L. 1985.**

53-21-197. Hearing on rehospitalization petition — revocation of conditional release. (1) The court may order that the patient's conditional release status be revoked and that the patient be returned to the mental health facility from which the patient was conditionally released or be sent to another appropriate inpatient mental health facility if, after a hearing, the court finds by clear and convincing evidence that:

(a) the conditionally released patient has been determined by the district court to be suffering from a mental disorder and requiring commitment and is presently under a valid order of commitment pursuant to 53-21-127 or 53-21-128; and

(b) the conditionally released patient has violated a condition of the release, that the violation has caused a deterioration of the patient's mental condition, and that as a result of this deterioration, the patient can no longer be appropriately served by outpatient care.

(2) A revocation of the patient's conditional release status under subsection (1) must be based on the testimony of the professional person responsible for the patient's case.

(3) If the court revokes the patient's conditional release status pursuant to subsection (1), a treatment plan must be updated or a new plan prepared for the patient as required by and within the time set forth in 53-21-162.

(4) Except as provided in 53-21-198, an order revoking the patient's conditional release status may not order hospitalization or impose other conditions of release that extend beyond the expiration date of the order committing the patient under 53-21-127 or 53-21-128.

History: **En. Sec. 4, Ch. 541, L. 1985; amd. Sec. 33, Ch. 490, L. 1997.**

53-21-198. Extension of conditions of release — hearing. (1) Conditions of release may be extended by the district court beyond the expiration date of the order committing the patient under 53-21-127 or 53-21-128, but in no case for longer than 2 years beyond that date, upon a showing by clear and convincing evidence that:

(a) continuation of the conditions of release is necessary to prevent the deterioration of the patient's mental disorder; and

(b) the deterioration will predictably result in the necessity of further inpatient care for the patient. Predictability may be established by the patient's medical history.

(2) Not less than 2 calendar weeks prior to the end of the period of detention ordered under 53-21-127 or 53-21-128 or the period of extension ordered under subsection (5) of this section, the professional person responsible for the patient's case may petition the court for extension of the conditions of

release. The petition must be accompanied by a written report and evaluation of the patient's mental and physical condition. The report must describe any tests and evaluation devices that have been employed in evaluating the patient, the course of treatment that has been undertaken for the patient, and the future course of treatment anticipated by the professional person.

(3) Upon the filing of the petition, the court shall give written notice of the filing of the petition to the patient, the patient's next of kin, if reasonably available, the friend of respondent appointed by the court, if any, and the patient's counsel. If any person notified requests a hearing prior to the end of the period of detention ordered under 53-21-127 or 53-21-128, the court shall immediately set a time and place for a hearing on a date not more than 10 days from the receipt of the request and notify the same people, including the professional person in charge of the patient. If a hearing is not requested, the court shall enter an order extending the conditions of release for a period not to exceed 6 months.

(4) Procedure on the petition for extension is the same in all respects as the procedure for hearing on a rehospitalization petition pursuant to 53-21-197. However, in an extension proceeding, the finding required is that set forth in subsection (1) of this section. The hearing must be held in the district court for the county in which the patient is residing. Court costs and witness fees, if any, must be paid by the county that paid the same costs in the initial commitment proceeding.

(5) If upon the hearing the court finds that the showing required by subsection (1) has not been made, the conditions of release may not be extended. If the court finds that the required showing has been made, the court may extend the conditions of release as recommended by the professional person. In its order, the court shall describe what alternatives for treatment of the patient are available, what alternatives were investigated, and why the investigated alternatives were not considered suitable. The court may not order continuation of an alternative that does not include a comprehensive, individualized plan of treatment for the patient, as required by 53-21-162. A court order for the continuation of an alternative must include a specific finding that a comprehensive, individualized plan of treatment exists.

(6) Further extensions may be obtained under the same procedure described in this section. However, the patient's custody may not be affected for more than 1 year without a renewal of the extension under the procedures set forth in this section, including a hearing and a statement of the findings required by subsection (5). Extensions under this subsection may not extend the 2-year extension limitation provided in subsection (1).

History: En. Sec. 5, Ch. 541, L. 1985; amd. Sec. 34, Ch. 490, L. 1997.

Part 2

Community Mental Health Centers

53-21-201. Definitions. As used in this part, the following definitions apply:

(1) "Community mental health center" means a facility, not necessarily encompassed within one building, that is licensed by the department of public health and human services as a mental health center, as defined in 50-5-101,

and that offers comprehensive mental health services that include at least the following services to the public:

(a) outpatient services, including specialized outpatient services for children, the elderly, individuals who have serious mental illness, and residents of its service area who have been discharged from inpatient treatment at a mental health facility;

(b) 24-hour-a-day emergency care services;

(c) day treatment or other partial hospitalization services or psychosocial rehabilitation services;

(d) screening for patients being considered for admission to state mental health facilities to determine the appropriateness of admission; and

(e) consultation and education in mental health.

(2) "Department" means the department of public health and human services.

History: En. 80-2801 by Sec. 1, Ch. 509, L. 1975; R.C.M. 1947, 80-2801; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 312, L. 1991; amd. Sec. 168, Ch. 418, L. 1995; amd. Sec. 492, Ch. 546, L. 1995.

53-21-202. Duties of department. The department shall:

(1) take cognizance of matters affecting the mental health of the citizens of the state;

(2) initiate mental health care and treatment, prevention, and research as can best be accomplished by community-centered services. The means must be utilized to initiate and operate these services in cooperation with local agencies as established under this part.

(3) collect and disseminate information relating to mental health;

(4) prepare and maintain a comprehensive plan for the development of public mental health services in the state;

(5) receive from agencies of the United States and other state agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions for the development of mental health services within the state;

(6) establish standards for mental health programs that receive funds from the department;

(7) evaluate performance of programs that receive funds from the department in compliance with federal and state standards; and

(8) coordinate state and community resources to ensure comprehensive delivery of services to children with emotional disturbances and submit at least a biennial report to the governor and the legislature concerning the activities and recommendations of the department and service providers.

History: En. 80-2802 by Sec. 2, Ch. 509, L. 1975; amd. Sec. 52, Ch. 37, L. 1977; R.C.M. 1947, 80-2802; amd. Sec. 19, Ch. 361, L. 1983; amd. Sec. 2, Ch. 312, L. 1991; amd. Sec. 12, Ch. 579, L. 1993; amd. Sec. 493, Ch. 546, L. 1995; amd. Sec. 15, Ch. 171, L. 1997.

53-21-203. Departmental contracts with mental health corporations. The department may enter into contracts with regional mental health corporations for the purposes of the prevention, diagnosis, and treatment of mental illness. Under rules adopted by the department, mental health corporations may be provided for directly by state agencies or indirectly through contract or cooperative arrangements with other agencies of government, regional or local, private or public agencies, private professional persons, or hospitals.

History: En. 80-2803 by Sec. 3, Ch. 509, L. 1975; R.C.M. 1947, 80-2803; amd. Sec. 20, Ch. 361, L. 1983; amd. Sec. 1, Ch. 124, L. 1985.

Cross-References

Public contracts generally, Title 18, ch. 1.

53-21-204. Mental health corporations. (1) Mental health regions must be established in the state mental health plan and must conform to the mental health regions as established in the state mental health construction plan promulgated by the department under the federal Community Mental Health Centers Act.

(2) The mental health regions must be established under Title 35, chapter 2. Upon incorporation, a mental health region may enter into contracts with the department in order to carry out the department's comprehensive plan for mental health. These nonprofit corporations may not be considered agencies of the department or the state of Montana.

(3) Upon the establishment of the mental health regions, the county commissioners in each of the counties in the region designated as participating counties pursuant to subsection (8) shall appoint a person from their respective county to serve as a representative of the county on the regional mental health corporation board. In addition, unless the groups in subsections (3)(a) and (3)(b) are already represented, the board consists of three members-at-large who must be chosen according to the corporate bylaws, as follows:

(a) Two members must be chosen, one from each of the following groups:

(i) persons with severe and disabling mental illnesses; and

(ii) family members of persons with severe and disabling mental illnesses.

(b) One person must be chosen from among the following four groups:

(i) parents of children with emotional disturbances;

(ii) advocates of mental health services for the elderly;

(iii) health care professionals; or

(iv) organizations that provide community support services, such as food, housing, and clothing, to persons with severe and disabling mental illnesses.

(4) This section does not prohibit a regional mental health corporation from voluntarily expanding its board membership to include members-at-large, appointed by the board, from any of the groups described in subsections (3)(a) and (3)(b).

(5) The board must be established under guidelines adopted by the bylaws of the corporation. All appointments to the board must be for terms of 2 years, and the department must be notified in writing of all appointments.

(6) The duties of an organized regional mental health corporation board include:

(a) annual review and evaluation of mental health needs and services within the region;

(b) preparation and submission to the department and to each of the counties in the region of plans and budget proposals to provide and support mental health services within the region;

(c) establishment of a recommended proportionate level of financial participation of each of the counties within the region in the provision of mental health services within the limits of this section;

(d) receipt and administration of money and other support made available for the purposes of providing mental health services by the participating agencies, including grants from the United States government and other agencies, receipts for established fees for services rendered, taxes, gifts, donations, and any other type of support or income. All funds received by the board in accordance with this part must be used to carry out the purposes of this part.

(e) supervision of appropriate administrative staff personnel of the operation of community mental health services within the region;

(f) keeping all records of the board and making reports required by the department.

(7) Regional mental health board members must be reimbursed from funds of the board for actual and necessary expenses incurred in attending meetings and in the discharge of board duties when assigned by the board.

(8) Prior to June 10 of each year, the board of mental health shall submit to the board of county commissioners of each of the counties within the constituted mental health region an annual budget, specifying each county's recommended proportionate share. If the board of county commissioners includes in the county budget the county's proportionate share of the regional board's budget, it must be designated as a participating county. Funds for each participating county's proportionate share for the operation of mental health services within the region must be derived from the county's general fund. If the general fund is insufficient to meet the approved budget, a levy not to exceed 1 mill may be made on the taxable valuation of the county in addition to all other taxes allowed by law to be levied on that property.

(9) The regional board of mental health, with the approval of the department, shall establish a schedule of fees for mental health services. The fees may be received by the board and used to implement the budget in accordance with subsection (6)(d).

History: En. 20-2804 by Sec. 4, Ch. 509, L. 1975; R.C.M. 1947, 80-2804; amd. Sec. 1, Ch. 29, L. 1987; amd. Sec. 1, Ch. 806, L. 1991; amd. Sec. 1, Ch. 37, L. 1993; amd. Sec. 169, Ch. 418, L. 1995; amd. Sec. 494, Ch. 546, L. 1995; amd. Sec. 43, Ch. 58, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 58 deleted third sentence in (2) that read: "However, they may retain and enter into retirement programs as established under Title 19, chapter 3." Amendment effective July 1, 1999.

53-21-205. Continuation of services. Nothing in this part shall be construed to prevent the continuation of existing mental health services or facilities.

History: En. 80-2805 by Sec. 5, Ch. 509, L. 1975; R.C.M. 1947, 80-2805.

53-21-206. Availability of services. (1) The services of the department and of the incorporated regional mental health centers are available without discrimination on the basis of race, color, creed, religion, or ability to pay and shall comply with Title VI of the Civil Rights Act of 1964.

(2) Services available to individuals unable to pay for the services may be limited by the department based upon availability of funding.

History: En. 80-2806 by Sec. 6, Ch. 509, L. 1975; amd. Sec. 17, Ch. 38, L. 1977; R.C.M. 1947, 80-2806; amd. Sec. 11, Ch. 590, L. 1995.

Cross-References

Individual dignity, Art. II, sec. 4, Mont. Const.

Illegal discrimination, Title 49, ch. 2.

53-21-207 through 53-21-210 reserved.

53-21-211. Purpose. The purpose of 53-21-211 through 53-21-214 is to:

(1) eliminate unnecessary duplication and overlapping of review and inspection of community mental health centers by multiple state agencies;

(2) improve the efficiency and minimize the cost of necessary state review and announced inspection of community mental health centers; and

(3) reduce the inconvenience and cost to community mental health centers of review and inspection by separate state agencies.

History: En. Sec. 1, Ch. 619, L. 1989.

53-21-212. Definition. As used in 53-21-211 through 53-21-214, the term "state agency" means:

(1) the department of public health and human services provided for in 2-15-2201;

and

(2) the mental disabilities board of visitors provided for in 2-15-211.

History: En. Sec. 2, Ch. 619, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 3, Ch. 312, L. 1991; amd. Sec. 170, Ch. 418, L. 1995; amd. Sec. 495, Ch. 546, L. 1995.

53-21-213. Joint review and inspection. Each state agency shall, if possible and practical, participate in joint review and inspection of community mental health centers. All joint announced onsite review and inspection activities of state agencies must be coordinated by function so that similar review and inspection activities of each state agency are conducted at one time.

History: En. Sec. 3, Ch. 619, L. 1989.

53-21-214. Authorization for employees to perform functions of other state agency. Each state agency may enter into an interagency agreement with other state agencies to authorize its employees to conduct specific review and inspection of community mental health centers under the jurisdiction of another state agency. Prior to authorizing employees of another state agency to conduct review and inspection under its jurisdiction, each state agency may require minimum standards of knowledge and training relevant to the type of activity to be conducted.

History: En. Sec. 4, Ch. 619, L. 1989.

Part 3

Warm Springs State Hospital
(Repealed. Sec. 26, Ch. 361, L. 1983)

Part Compiler's Comments

Histories of Repealed Sections:

53-21-301. En. Sec. 67, Ch. 199, L. 1965; amd. Sec. 31, Ch. 320, L. 1967; amd. Sec. 3, Ch. 90, L. 1974; amd. Sec. 60, Ch. 120, L. 1974; R.C.M. 1947, 80-2401.

53-21-302. En. Sec. 68, Ch. 199, L. 1965; amd. Sec. 32, Ch. 320, L. 1967; amd. Sec. 62, Ch. 120, L. 1974; amd. Sec. 1, Ch. 338, L. 1974; amd. Sec. 1, Ch. 428, L. 1975; R.C.M. 1947, 80-2402.

Part 4

Community-Based Nursing Homes
Montana Mental Health Nursing Care Center

53-21-401. Legislative intent. (1) It is the intent of the legislature that geriatric patients at the Montana state hospital and geriatric residents of the state who may in the future be placed at the Montana state hospital and who do not need intensive psychiatric care receive care and treatment in nursing homes located in community settings.

(2) It is the further intent of the legislature that nursing homes providing such care and treatment be located regionally so that the residents may be near their homes and families.

(3) It is the further intent of the legislature that these nursing homes shall be located in communities with:

(a) a labor pool large enough to ensure adequate and qualified staffing;

(b) sufficient medical facilities and medical professionals to provide necessary medical services; and

(c) if possible, an institution or institutions of higher learning with educational programs in disciplines with relevance to the problems of aging.

History: En. 80-2413 by Sec. 1, Ch. 523, L. 1975; R.C.M. 1947, 80-2413; amd. Sec. 21, Ch. 361, L. 1983.

53-21-402. Powers and duties of department of public health and human services. The department of public health and human services:

(1) shall contract with nonprofit corporations which demonstrate expertise in and the capability of providing rehabilitative and restorative programs for aged citizens for the operation and management of nursing homes established under this part;

(2) shall ensure that nursing homes established and operated under this part are in compliance with all applicable federal and state regulations;

(3) shall adopt rules for staffing requirements and the admission of patients;

(4) shall provide that geriatric residents of the Montana state hospital have first priority for admission to nursing homes established under this part;

(5) may accept grants, gifts, bequests, and contributions in money or property or any other form from individuals, corporations, associations, or federal, state, and local government agencies for the purposes of establishing and operating nursing homes under this part.

History: En. 80-2414 by Sec. 4, Ch. 523, L. 1975; R.C.M. 1947, 80-2414; amd. Sec. 22, Ch. 361, L. 1983; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 496, Ch. 546, L. 1995.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

One-step licensing — inspection by other Department, Title 50, ch. 8.

53-21-403 through 53-21-410 reserved.

53-21-411. Location and function of Montana mental health nursing care center. (1) The institution located at Lewistown is the Montana mental health nursing care center. The primary function of the center is the care and treatment of persons with mental disorders who require nursing care. Priority must be given to patients referred from the Montana state hospital.

(2) Appropriate admissions to the Montana mental health nursing care center are persons who are unable to maintain themselves in their homes or communities due to a mental disorder, as defined in 53-21-102, but who do not require the intensity of treatment available at the Montana state hospital.

(3) The department of public health and human services may adopt rules concerning specific admission criteria, treatment, and discharge procedures consistent with 53-21-414 and subsections (1) and (2) of this section.

History: En. Sec. 71, Ch. 199, L. 1965; amd. Sec. 70, Ch. 120, L. 1974; amd. Sec. 36, Ch. 466, L. 1975; R.C.M. 1947, 80-2501; amd. Sec. 1, Ch. 231, L. 1983; (2)En. Sec. 3, Ch. 231, L. 1983; amd. Secs. 23, 27, Ch. 361, L. 1983; amd. Sec. 1, Ch. 243, L. 1985; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 3, Ch. 94, L. 1995; amd. Sec. 497, Ch. 546, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-21-412. Repealed. Sec. 7, Ch. 94, L. 1995.

History: En. Sec. 72, Ch. 199, L. 1965; amd. Sec. 71, Ch. 120, L. 1974; R.C.M. 1947, 80-2502; amd. Sec. 24, Ch. 361, L. 1983; amd. Sec. 2, Ch. 243, L. 1985; amd. Sec. 1, Ch. 262, L. 1991.

53-21-413. Discharge and transfer of patients. (1) The superintendent of the Montana mental health nursing care center may authorize the discharge of a patient residing at the center according to rules adopted by the department of public health and human services. Rules adopted by the department governing discharge from the center must be consistent with 53-21-111, 53-21-181, and 53-21-183.

(2) A patient in the center who requires the intensity of treatment available at the Montana state hospital may be transferred to the Montana state hospital if the patient is subject to an involuntary commitment. The department shall notify the patient, the patient's next of kin, and the mental disabilities board of visitors at least 15 days before the transfer. If a person or entity notified by the department objects to the transfer, the person or entity may petition the district court for a hearing to review whether the transfer is necessary and appropriate to meet the needs of the patient. The notice required by this subsection must include notification of the right to petition the district court pursuant to this subsection. Notice pursuant to this subsection does not preclude transfer pursuant to 53-21-130.

History: En. Sec. 73, Ch. 199, L. 1965; R.C.M. 1947, 80-2503; amd. Sec. 2, Ch. 231, L. 1983; amd. Sec. 3, Ch. 243, L. 1985; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 5, Ch. 94, L. 1995; amd. Sec. 499, Ch. 546, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-21-414. Admissions to mental health nursing care center. (1) The Montana mental health nursing care center may admit patients on a voluntary basis according to admission criteria and procedures established in administrative rules.

(2) A patient involuntarily committed to the Montana state hospital may be transferred by the department of public health and human services to the Montana mental health nursing care center if the patient meets the admission criteria of the center. The department shall notify the patient, the patient's next of kin, and the mental disabilities board of visitors at least 15 days before

the transfer. If a person or entity notified by the department objects to the transfer, the person or entity may petition the district court for a hearing to review whether the transfer is necessary and appropriate to meet the needs of the patient. The notice required by this subsection must include notification of the right to petition the district court pursuant to this subsection. Section 53-21-128 applies to extensions of involuntary commitment of patients to the center.

(3) Except as provided in 53-21-413(2) and subsection (2) of this section, patients involuntarily transferred to the center have the rights provided in this chapter.

History: En. Sec. 4, Ch. 94, L. 1995.

Part 5
Youth Treatment

Part Cross-References

Mentally ill — Montana State Hospital, 53-21-601.

53-21-501. Repealed. Sec. 15, Ch. 14, Sp. L. June 1986.

History: En. Sec. 1, Ch. 363, L. 1983; amd. Sec. 2, Ch. 612, L. 1985.

53-21-502. Repealed. Sec. 15, Ch. 14, Sp. L. June 1986.

History: En. Sec. 5, Ch. 363, L. 1983.

53-21-503 and 53-21-504 reserved.

53-21-505. Repealed. Sec. 15, Ch. 14, Sp. L. June 1986.

History: En. Sec. 2, Ch. 363, L. 1983; amd. Sec. 3, Ch. 612, L. 1985.

53-21-506. No commitment to Montana state hospital. An individual who is under 18 years of age may not be voluntarily admitted or committed by a court to the Montana state hospital unless an information has been filed in district court pursuant to 41-5-206.

History: En. Sec. 3, Ch. 363, L. 1983; amd. Sec. 27, Ch. 361, L. 1983; amd. Sec. 4, Ch. 612, L. 1985; amd. Sec. 1, Ch. 549, L. 1987; amd. Sec. 71, Ch. 550, L. 1997.

53-21-507. Repealed. Sec. 5, Ch. 612, L. 1985.

History: En. Sec. 4, Ch. 363, L. 1983.

Part 6
Montana State Hospital

53-21-601. Location and primary function of hospital. (1) The facility providing mental health care services at Warm Springs, Montana, is the Montana state hospital and as its primary function provides care and treatment of mentally ill persons.

(2) (a) The Montana state hospital is a mental health facility, as defined in 53-21-102, of the department of public health and human services for the care and treatment of mentally ill persons.

(b) The role of Montana state hospital is to provide intensive inpatient psychiatric services, including those services necessary for transition to community care, as components in a comprehensive continuum of publicly and privately provided programs that emphasize treatment in the least restrictive environment.

(c) The mission of Montana state hospital is to stabilize persons with severe mental illness and to return them to the community as soon as possible if adequate community-based support services are available.

(3) The department shall adopt rules to manage the state hospital patient population in a manner that will ensure emergency access to services, protect public and individual safety, provide active treatment, implement effective discharge planning, and ensure access to appropriate community-based services.

History: En. Sec. 17, Ch. 199, L. 1965; amd. Sec. 5, Ch. 320, L. 1967; amd. Sec. 1, Ch. 90, L. 1974; R.C.M. 1947, 80-1701; amd. Sec. 13, Ch. 361, L. 1983; Sec. 53-6-301, MCA 1989; redes. 53-21-601 by Code Commissioner, 1991; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 67, L. 1993; amd. Sec. 13, Ch. 579, L. 1993; amd. Sec. 500, Ch. 546, L. 1995; amd. Sec. 6, Ch. 247, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 247 in (2)(b) and (2)(c) substituted "Montana state hospital" for "the Warm Springs facility"; in middle of (2)(b) after "services" inserted "including those services necessary for transition to community care"; and made minor changes in style. Amendment effective April 5, 1999.

53-21-602. Repealed. Sec. 19, Ch. 579, L. 1993.

History: En. Sec. 19, Ch. 199, L. 1965; amd. Sec. 7, Ch. 320, L. 1967; R.C.M. 1947, 80-1703; amd. Sec. 15, Ch. 361, L. 1983; amd. Sec. 4, Ch. 151, L. 1985; Sec. 53-6-303, MCA 1989; redes. 53-21-602 by Code Commissioner, 1991; amd. Sec. 1, Ch. 262, L. 1991.

53-21-603. Chemical dependency treatment center. (1) There is a Montana chemical dependency treatment center. The Montana chemical dependency treatment center is the approved public treatment facility as defined in 53-24-103.

(2) The Montana chemical dependency treatment center shall provide detoxification, evaluation, treatment, referral, and rehabilitation to persons in Montana who are referred for inpatient treatment of alcoholism or other chemical dependency.

History: En. Sec. 70, Ch. 199, L. 1965; amd. Sec. 33, Ch. 320, L. 1967; Sec. 80-2404, R.C.M. 1947; amd. and redes. 80-1705 by Sec. 2, Ch. 90, L. 1974; R.C.M. 1947, 80-1705; amd. Sec. 1, Ch. 284, L. 1981; amd. Sec. 16, Ch. 361, L. 1983; Sec. 53-6-304, MCA 1989; redes. 53-21-603 by Code Commissioner, 1991; amd. Sec. 14, Ch. 579, L. 1993; amd. Sec. 1, Ch. 165, L. 1995.

Cross-References

Alcoholism and drug dependence, Title 53, ch. 24.

Part 7

Mental Health Managed Care

Part Compiler's Comments

Effective Date: Section 17, Ch. 577, L. 1999, provided: "[This act] is effective on passage and approval." Approved May 6, 1999.

53-21-701. Mental health managed care — contract — advisory council. (1) The department of public health and human services shall incrementally develop managed care systems for recipients of public mental health services. The department may contract with one or more persons for the management of comprehensive mental health services for medicaid recipients and for persons as specified in 53-6-131(10). The department may contract for the provision of these services by means of a fixed monetary or capitated amount per recipient. The department shall ensure that each contractor that assumes risk is required to comply with the provisions of Title 53, chapter 6, part 7, for the medicaid portion of the program.

(2) A managed care system is a program organized to serve the mental health needs of recipients in an efficient and cost-effective manner by managing the receipt of mental health care and services for a geographical or otherwise defined population of recipients through appropriate health care professionals. The management of mental health care services must provide for services in the most cost-effective manner through coordination and management of the appropriate level of care and appropriate level of services. The managed care system shall review and determine the appropriate level of services on an individual basis in order to ensure that access to care, quality of care, and the cost of the program are maintained.

(3) The department may enter into one or more contracts with managed care entities for the administration or delivery of mental health services. These contracts may be based upon a fixed monetary amount or a capitated amount per individual, and a contractor may assume all or a part of the financial risk of providing services to a set population of eligible individuals. The department may require the participation of recipients in managed care systems based upon geographical, financial, medical, or other factors that the department may determine are relevant to the development and efficient operation of the managed care systems.

(4) The department may establish eligibility requirements, resource and income standards, premiums, fees, and copayments. Eligible individuals may not have a family income that exceeds the amount established pursuant to 53-6-131(10).

(5) The department shall establish the amount, scope, and duration of services to be provided under the program. The services to be provided and eligibility requirements may be more limited than those in the medicaid program under chapter 6.

(6) (a) The department shall form an advisory council, to be known as the mental health oversight advisory council, that is not subject to 2-15-122 to provide input to the department in the development and management of any public mental health system. The advisory council membership must include:

(i) one-half of the members as consumers of mental health services, including persons with serious mental illnesses who are receiving public mental health services, other recipients of mental health services, former recipients of public mental health services, and immediate family members of recipients of mental health services; and

(ii) advocates for consumers or family members of consumers, members of the public at large, providers of mental health services, legislators, department representatives, and a representative of the commissioner of insurance.

(b) The advisory council under this section may be administered so as to fulfill any federal advisory council requirements to obtain federal funds for this program.

(c) Geographic representation must be considered when appointing members to the advisory council in order to provide as wide a representation as possible.

(d) The advisory council shall provide a summary of each meeting and a copy of any recommendations made to the department to the legislative finance committee and any other designated appropriate legislative interim committee. The department shall provide the same committees with the department's rationale for not accepting or implementing any recommendation of the advisory council.

(7) The department shall formally evaluate contract performance with regard to specific outcome measures. The department shall explicitly identify performance and outcome measures that contractors are required to achieve in order to comply with contract requirements and to continue the contract. The contract must provide for progressive intermediate sanctions that may be imposed for nonperformance. The evaluation must be performed at least annually.

History: En. Sec. 6, Ch. 577, L. 1999.

53-21-702. Mental health managed care — system elements. (1) The department of public health and human services shall develop a delivery system of mental health managed care from current providers or other entities that are able to provide administration or delivery of mental health services. A system of mental health managed care must include the following elements:

(a) specific outcome and performance measures for the administration or delivery of a continuum of mental health services in order to provide contract compliance monitoring;

(b) a fixed monetary or capitated payment mechanism;

(c) a provision for local advisory councils that shall report to and meet on a regular basis with the advisory council provided for in 53-21-701(6);

(d) provisions for appeal at the local level;

(e) a requirement that each contractor that assumes any financial risk shall comply with the provisions of Title 53, chapter 6, part 7, for the medicaid portion of the program;

(f) provisions that require documentation of evidence of the ability to provide services through an adequate provider network, as provided for in Title 33, chapter 36, and to comply with rules, regulations, and contract requirements;

(g) a provision that, prior to final award of a contract, a successful bidder that serves adults shall enter into a contract with the Montana state hospital and the Montana mental health nursing care center that is consistent with 53-1-402, 53-1-413, and 90-7-312 and that includes financial incentives for the development and use of community-based services, rather than the use of the state institutional services;

(h) the services that must be provided for medicaid-eligible individuals;

(i) a provision to allow a spenddown by individuals to become eligible for medicaid;

(j) the services, which may include a pharmacy benefit, that must be provided to nonmedicaid-eligible individuals whose income levels are below 200% of the federal poverty level as provided for in 53-6-131(10);

(k) a provision that allows implementation of a specific sliding scale for premiums or copayments by nonmedicaid-eligible individuals taking into account income and percentage of poverty level;

(l) a provision for children who need mental health services that are provided under substantive interagency agreements between state agencies responsible for addictive and mental disorders, foster care, children with developmental disabilities, special education, and juvenile corrections; and

(m) requirements to ensure that the mental health managed care system will be operated in a cost-effective manner.

(2) Services for nonmedicaid-eligible individuals may be more limited than those services provided to medicaid-eligible individuals.

(3) The department shall contract with an independent professional consulting firm that is knowledgeable and experienced in developing managed mental health care systems. The department shall require, as part of the contract, that the consulting firm make regular reports to the legislative finance committee and any other appropriate legislative interim committee. Reports must be made at least every 6 months and must include information about the development and implementation of the new mental health managed care system.

(4) The term of a mental health managed care contract may not be more than 5 years. The department may implement care-managed fee-for-service reimbursement to provide mental health services as otherwise permitted by law during the transition from a single statewide contract for mental health managed care.

History: En. Sec. 7, Ch. 577, L. 1999.

53-21-703. Rulemaking authority. (1) The department shall adopt appropriate rules necessary for the administration of a program to provide mental health managed care services. The rules must establish eligibility criteria and may include but are not limited to financial standards and criteria for income and resources, treatment of resources, nonfinancial criteria, residency, application, termination, definition of terms, and confidentiality of applicant and recipient information.

(2) The department shall adopt rules establishing the amount, scope, and duration of services. The rules may also include but are not limited to ensuring that services are medically necessary and that the services are the most efficient and cost-effective available.

(3) The department may adopt rules establishing rates of reimbursement of services provided under this part, selection and qualification of providers, and standards for managed care.

(4) Rules adopted by the department must take into account, when appropriate, the availability of appropriated funds, the actual costs of services, the quality of services, the professional knowledge and skills necessary for the delivery of services, and the availability of services.

History: En. Sec. 8, Ch. 577, L. 1999.

53-21-704. Transition. The department shall seek to continue its medicaid mental health managed care waiver as long as possible during the transition period to the new mental health managed care program as provided in 53-21-701. If the state loses its existing medicaid waiver for mental health managed care, then it shall pursue appropriate waivers for the transition to a new mental health managed care system as provided in 53-21-701.

History: **En. Sec. 15, Ch. 577, L. 1999.**

CHAPTER 22

INTERSTATE COMPACT ON MENTAL HEALTH

Part 1 — General Provisions

53-22-101. Enactment of compact.
53-22-102. Compact administrator.
53-22-103. Supplementary agreements.
53-22-104. Annual budget.
53-22-105. Court review.
53-22-106. Authenticated copies.

Part 1
General Provisions

Part Cross-References

Transfer to nonstate facilities, 53-21-133.

53-22-101. Enactment of compact. The Interstate Compact on Mental Health as contained herein is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

Article I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

Article II

As used in this compact:

(1) "sending state" means a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent;

(2) "receiving state" means a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent;

(3) "institution" means any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency;

(4) "patient" means any person subject to or eligible, as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact;

(5) "aftercare" means care, treatment, and services provided a patient, as defined herein, on convalescent status or conditional release;

(6) "mental illness" means mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, the welfare of others, or of the community;

(7) "mental deficiency" means mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs but shall not include mental illness as defined herein; and

(8) "state" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Article III

(1) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement, or citizenship qualifications.

(2) The provisions of subsection (1) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this subsection shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(3) No state shall be obliged to receive any patient pursuant to the provisions of subsection (2) of this article unless the sending state gives advance notice of its intention to send the patient, furnishes all available medical and other pertinent records concerning the patient, gives the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish, and unless the receiving state agrees to accept the patient.

(4) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(5) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further

transfer of the patient may be made as seems likely to be in the best interest of the patient.

Article IV

(1) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive aftercare or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that aftercare in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such aftercare in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(2) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby and if the public safety would not be jeopardized thereby, the patient may receive aftercare or supervision in the receiving state.

(3) In supervising, treating, or caring for a patient on aftercare pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

Article V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escapee in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

Article VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact without interference.

Article VII

(1) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(2) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific arrangement for that purpose, arrange for a different allocation of costs as among themselves.

(3) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies, and officers of and in the government of a party state or between a party state and its subdivisions as to the payment of costs or responsibilities therefor.

(4) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(5) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care, or treatment of the mentally ill or mentally deficient or any statutory authority pursuant to which such agreements may be made.

Article VIII

(1) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that, where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall, upon being duly advised of the new appointment and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances. In the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(2) The term "guardian" as used in subsection (1) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

Article IX

(1) No provisions of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(2) To every extent possible it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail, or lockup,

but such patient shall with all expedition be taken to a suitable institutional facility for mental illness or mental deficiency.

Article X

(1) Each party state shall appoint a compact administrator who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of a sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(2) The compact administrators of the respective party states shall have power to promulgate reasonable rules to carry out more effectively the terms and provisions of this compact.

Article XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

Article XII

This compact shall enter into full force and effect as to any state when enacted by it into law, and such state shall thereafter be a party thereto with any and all states legally joining therein.

Article XIII

(1) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect 1 year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(2) Withdrawal from any agreement permitted by Article VII(2) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

Article XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 112, L. 1971; amd. Sec. 48, Ch. 37, L. 1977; R.C.M. 1947, 80-2412(part).

53-22-102. Compact administrator. The director of the department of public health and human services is the compact administrator and may make any rules necessary for the administration of the compact. The director shall cooperate with all departments, agencies, and officers of the state and any political subdivision thereof to facilitate the proper administration of the Interstate Compact on Mental Health or of any supplementary agreement or agreements entered into thereunder by this state.

History: En. Sec. 1, Ch. 112, L. 1971; amd. Sec. 48, Ch. 37, L. 1977; R.C.M. 1947, 80-2412 (Art. XIV(2)); amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 501, Ch. 546, L. 1995.

53-22-103. Supplementary agreements. The director may enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact.

History: En. Sec. 1, Ch. 112, L. 1971; amd. Sec. 48, Ch. 37, L. 1977; R.C.M. 1947, 80-2412 (Art. XIV(3)).

53-22-104. Annual budget. The department of public health and human services in its annual budget shall include amounts necessary to discharge the financial obligations incurred by it to carry out the purposes of the Interstate Compact on Mental Health, and the legislature shall appropriate sums necessary for carrying out the purposes of the compact.

History: En. Sec. 1, Ch. 112, L. 1971; amd. Sec. 48, Ch. 37, L. 1977; R.C.M. 1947, 80-2412 (Art. XIV(4)); amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 502, Ch. 546, L. 1995.

53-22-105. Court review. The compact administrator is hereby directed to consult with the immediate family of any proposed transferee and, in the case of a proposed transferee from an institution in this state to an institution in another party state, to make no transfer out of the state without approval of the district or probate court. Before granting such approval, the court shall hold such hearings as it considers appropriate. In addition, the court shall designate some appropriate person to deliver written notice of the proposed transferee's right to a hearing to the proposed transferee and his guardian ad litem. The person serving such notices shall make a written return to the court that such has been done. At the conclusion of such hearing, if any, the court may approve the proposed transfer, order the release of the proposed transferee, or enter any other suitable order.

History: En. Sec. 1, Ch. 112, L. 1971; amd. Sec. 48, Ch. 37, L. 1977; R.C.M. 1947, 80-2412 (Art. XIV(5)).

53-22-106. Authenticated copies. Duly authenticated copies of the compact shall, upon its approval, be transmitted by the secretary of state to the governor of each state, the attorney general, and the secretary of state of the United States and the Council of State Governments.

History: En. Sec. 1, Ch. 112, L. 1971; amd. Sec. 48, Ch. 37, L. 1977; R.C.M. 1947, 80-2412 (Art. XIV(6)).

CHAPTER 23

EUGENICAL STERILIZATION
(Repealed. Sec. 1, Ch. 286, L. 1981)

Chapter Compiler's Comments

Histories of Repealed Sections:

53-23-101 and 53-23-102. En. Sec. 1, Ch. 332, L. 1969; R.C.M. 1947, 69-6401.

53-23-103 through 53-23-105. En. Secs. 3, 4, 6, Ch. 332, L. 1969; amd. Secs. 34, 35, 37, Ch. 120, L. 1974; R.C.M. 1947, 69-6403, 69-6404, 69-6406.

CHAPTER 24

ALCOHOLISM AND DRUG DEPENDENCE

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Part 1
General Provisions

53-24-101. Legislative purpose. It is the purpose of this chapter and the policy of this state to recognize chemical dependency as a problem affecting the health, safety, morals, economy, and general welfare of this state; to recognize chemical dependency as a problem subject to treatment; and to recognize the sufferer of chemical dependency as worthy of treatment and rehabilitation. It is the intent of this chapter to establish means whereby the appropriate resources of this state may be focused fully and effectively upon the problem of chemical dependency and utilized in implementing programs for the control and treatment of this problem.

History: En. Sec. 1, Ch. 303, L. 1969; Sec. 69-6201, R.C.M. 1947; redes. 80-2701 by Sec. 6, Ch. 280, L. 1975; amd. Sec. 49, Ch. 37, L. 1977; R.C.M. 1947, 80-2701; amd. Sec. 1, Ch. 406, L. 1983.

53-24-102. Declaration of policy. It is the policy of the state of Montana to recognize alcoholism as an illness and that alcoholics and intoxicated persons may not be subjected to criminal prosecution because of their consumption of alcoholic beverages but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society.

History: En. 69-6211 by Sec. 1, Ch. 302, L. 1974; Sec. 69-6211, R.C.M. 1947; redes. 80-2708 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2708.

Cross-References

Criminal responsibility of person in intoxicated condition, 45-2-203.

Unlawful possession of intoxicating substance, 45-5-624.

53-24-103. Definitions. For purposes of this chapter, the following definitions apply:

(1) "Alcoholic" means a person who has a chronic illness or disorder of behavior characterized by repeated drinking of alcoholic beverages to the extent that it endangers the health, interpersonal relationships, or economic function of the individual or public health, welfare, or safety.

(2) "Approved private treatment facility" means a private agency that has as its function the treatment, rehabilitation, and prevention of chemical dependency, that meets the standards prescribed in 53-24-208(1), and that is approved under 53-24-208.

(3) "Approved public treatment facility" means:

(a) a treatment agency operating under the direction and control of the department as a state agency and approved under 53-24-208; or

(b) a treatment agency operating under the direction and control of a local government and approved under 53-24-208.

(4) "Chemical dependency" means the use of any chemical substance, legal or illegal, that creates behavioral or health problems, or both, resulting in operational impairment. This term includes alcoholism, drug dependency, or both, that endanger the health, interpersonal relationships, or economic functions of an individual or the public health, welfare, or safety.

(5) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(6) "Department" means the department of public health and human services provided for in 2-15-2201.

(7) "Family member" is the spouse, mother, father, child, or member of the household of a chemically dependent person whose life has been affected by the actions of the chemically dependent person and who may require treatment.

(8) "Incapacitated by alcohol" means that a person, as a result of the use of alcohol, is unconscious or has judgment otherwise so impaired that the person is incapable of realizing and making a rational decision with respect to a need for treatment.

(9) "Incompetent person" means a person who has been adjudged incompetent by the district court.

(10) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol.

(11) "Prevention" has meaning on four levels; these are:

(a) education to provide information to the school children and general public relating to chemical dependency treatment and rehabilitative services and to reduce the consequences of life experiences acquired by contact with a chemically dependent person;

(b) early detection and recovery from the illness before lasting emotional or physical damage, or both, have occurred;

(c) if lasting emotional or physical damage, or both, have occurred, to arrest the illness before full disability has been reached;

(d) the provision of facility requirements to meet division program standards and improve public accessibility for services.

(12) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(13) "Treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling, which may be extended to chemically dependent persons, intoxicated persons, and family members.

History: En. 69-6212 by Sec. 2, Ch. 302, L. 1974; Sec. 69-6212, R.C.M. 1947; amd. and redes. 80-2709 by Sec. 2, Ch. 280, L. 1975; amd. Sec. 1, Ch. 414, L. 1977; R.C.M. 1947, 80-2709; amd. Sec. 1, Ch. 711, L. 1979; amd. Sec. 2, Ch. 406, L. 1983; amd. Sec. 1, Ch. 513, L. 1983; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 503, Ch. 546, L. 1995; amd. Sec. 5, Ch. 188, L. 1997.

53-24-104. Deposit of funds from federal or private sources with state treasurer. Funds available to the department from federal or private sources for use in chemical dependency prevention, treatment, and control programs shall be deposited with the state treasurer to the account of the department in the federal special revenue fund or the state special revenue fund.

History: En. Sec. 7, Ch. 303, L. 1969; Sec. 69-6207, R.C.M. 1947; redes. 80-2707 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2707; amd. Sec. 15, Ch. 38, L. 1979; amd. Sec. 2, Ch. 277, L. 1983; amd. Sec. 3, Ch. 406, L. 1983; amd. Sec. 5, Ch. 700, L. 1989.

53-24-105. Application of administrative procedure act. The Montana Administrative Procedure Act applies to and governs all administrative actions taken under this chapter.

History: En. 69-6224 by Sec. 14, Ch. 302, L. 1974; Sec. 69-6224, R.C.M. 1947; redes. 80-2721 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2721.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

53-24-106. Criminal laws limitation. (1) No county, municipality, or other political subdivision may adopt or enforce a local law, ordinance, resolution, or rule having the force of law that includes drinking, being a common drunkard, or being found in an intoxicated condition as one of the elements of the offense giving rise to a criminal or civil penalty or sanction.

(2) Nothing in this section affects any law, ordinance, resolution, or rule against drunken driving, driving under the influence of alcohol, or other similar offense involving the operation of a vehicle, an aircraft, a boat, machinery, or other equipment or regarding the sale, purchase, dispensing, possessing, or use of alcoholic beverages at stated times and places or by a particular class of persons.

History: En. 80-2723 by Sec. 2, Ch. 403, L. 1975; R.C.M. 1947, 80-2723.

Cross-References

Driving under influence of alcohol or drugs, Title 61, ch. 8, part 4.

Intoxicated pedestrian, 61-8-508.

53-24-107. Public intoxication not a criminal offense. (1) A person who appears to be intoxicated or incapacitated by alcohol in public commits no criminal offense solely by reason of being in such condition but may be detained by a peace officer for the person's own protection. A peace officer who detains a person who appears to be intoxicated or incapacitated by alcohol in public shall proceed in the manner as provided by 53-24-303.

(2) If none of the alternatives in 53-24-303 are reasonably available, a peace officer may detain a person who appears to be intoxicated or incapacitated by alcohol in jail until the person is no longer creating a risk to himself or others.

(3) A peace officer, acting within the scope of his authority under this chapter, shall not be personally liable for his actions.

History: En. 80-2724 by Sec. 3, Ch. 403, L. 1975; R.C.M. 1947, 80-2724.

Cross-References

Treatment and services for intoxicated persons and persons incapacitated by alcohol, 53-24-303.

53-24-108. Use of funds generated by taxation on alcoholic beverages. (1) Revenue generated by 16-1-404, 16-1-406, and 16-1-411 to state-approved private, nonprofit or public programs whose function is the treatment, rehabilitation, and prevention of alcoholism may be distributed in either of the following manners:

(a) as payment of fees for alcoholism services provided by state-approved private, nonprofit or public alcoholism programs and licensed hospitals for detoxification services; or

(b) as grants to state-approved private, nonprofit or public alcoholism programs.

(2) State-approved private chemical programs organized for profit are not eligible for revenue generated by 16-1-404, 16-1-406, and 16-1-411.

(3) A person operating a state-approved alcoholism program may not be required to provide matching funds as a condition of receiving a grant under subsection (1).

(4) In addition to funding received under this section, a person operating a state-approved alcoholism program may accept gifts, bequests, or the donation of services or money for the treatment, rehabilitation, or prevention of alcoholism.

(5) A person receiving funding under this section to support operation of a state-approved alcoholism program may not refuse alcoholism treatment, rehabilitation, or prevention services to a person solely because of that person's inability to pay for those services.

(6) A grant made under this section is subject to the following conditions:

(a) The grant application must contain an estimate of all program income, including income from earned fees, gifts, bequests, donations, and grants from other than state sources during the period for which grant support is sought.

(b) Whenever, during the period of grant support, program income exceeds the amount estimated in the grant application, the amount of the excess must be reported to the grantor.

(c) The excess must be used by the grantee under the terms of the grant in accordance with one or a combination of the following options:

(i) use for any purpose that furthers the objectives of the legislation under which the grant was made; or

(ii) to allow program growth through the expansion of services or for capital expenditures necessary to improve facilities where services are provided.

(7) Revenue generated by 16-1-404, 16-1-406, and 16-1-411 for the treatment, rehabilitation, and prevention of alcoholism that has not been encumbered for those purposes by the counties of Montana or the department must be returned to the state special revenue fund for the treatment, rehabilitation, and prevention of alcoholism within 30 days after the close of each fiscal year and must be distributed by the department the following year as provided in 53-24-206(3)(b).

History: En. 80-2725 by Sec. 7, Ch. 414, L. 1977; R.C.M. 1947, 80-2725; amd. Sec. 16, Ch. 38, L. 1979; amd. Sec. 2, Ch. 711, L. 1979; amd. Sec. 1, Ch. 183, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 513, L. 1983; amd. Sec. 1, Ch. 402, L. 1987; amd. Sec. 47, Ch. 422, L. 1997.

Part 2

Administration by Department of Public Health and Human Services

53-24-201. Department to administer chapter. The department shall administer the provisions of this chapter.

History: En. Sec. 5, Ch. 303, L. 1969; Sec. 69-6205, R.C.M. 1947; redes. 80-2705 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2705.

53-24-202. State and local government to cooperate with department. All agencies of state government, local government, and all state and local government employees shall, upon request, cooperate with the department in its activities under this chapter, but nothing in the chapter shall be construed to give the department control over any state or local agency or employee unless otherwise provided by law.

History: En. Sec. 6, Ch. 303, L. 1969; Sec. 69-6206, R.C.M. 1947; redes. 80-2706 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2706.

53-24-203. Repealed. Sec. 9, Ch. 711, L. 1979.

History: (1) thru (5)En. Sec. 3, Ch. 303, L. 1969; amd. Sec. 94, Ch. 349, L. 1974; Sec. 69-6203, R.C.M. 1947; amd. and redes. 80-2702 by Sec. 1, Ch. 280, L. 1975; amd. Sec. 50, Ch. 37, L. 1977; Sec. 80-2702, R.C.M. 1947; (6) thru (22)En. 69-6214 by Sec. 4, Ch. 302, L. 1974; Sec. 69-6214, R.C.M. 1947; redes. 80-2711 by Sec. 6, Ch. 280, L. 1975; Sec. 80-2711, R.C.M. 1947; R.C.M. 1947, 80-2702(1), 80-2711.

53-24-204. Powers and duties of department. (1) To carry out this chapter, the department may:

(a) accept gifts, grants, and donations of money and property from public and private sources;

(b) enter into contracts;

(c) acquire and dispose of property.

(2) The department shall:

(a) approve treatment facilities as provided for in 53-24-208;

(b) prepare a comprehensive long-term state chemical dependency plan every 4 years and update this plan each biennium;

(c) provide for and conduct statewide service system evaluations;

(d) distribute state and federal funds to the counties for approved treatment programs in accordance with the provisions of 53-24-206;

(e) plan in conjunction with approved programs and provide for training of program personnel delivering services to persons with a chemical dependency;

(f) establish criteria to be used for the development of new programs;

(g) encourage planning for the greatest utilization of funds by discouraging duplication of services, encouraging efficiency of services through existing programs, and encouraging rural counties to form multicounty districts or contract with urban programs for services;

(h) cooperate with the board of pardons and parole in establishing and conducting programs to provide treatment for intoxicated persons and persons with a chemical dependency in or on parole from penal institutions;

(i) establish standards for chemical dependency educational courses provided by state-approved treatment programs and approve or disapprove the courses; and

(j) assist all interested public agencies and private organizations in developing education and prevention programs for chemical dependency.

History: Ap.p. Sec. 3, Ch. 303, L. 1969; amd. Sec. 94, Ch. 349, L. 1974; R.C.M. 1947, 69-6203; amd. and redes. 80-2702 by Sec. 1, Ch. 280, L. 1975; amd. Sec. 50, Ch. 37, L. 1977; Sec. 80-2702, R.C.M. 1947; Ap.p. Sec. 3, Ch. 302, L. 1974; Sec. 69-6213, R.C.M. 1947; redes. 80-2710 by Sec. 6, Ch. 280, L. 1975; amd. Sec. 2, Ch. 414, L. 1977; Sec. 80-2710, R.C.M. 1947; R.C.M. 1947, 80-2702(2), 80-2710; amd. Sec. 3, Ch. 711, L. 1979; amd. Sec. 176, Ch. 575, L. 1981; amd. Sec. 1, Ch. 365, L. 1983; amd. Sec. 4, Ch. 406, L. 1983; amd. Sec. 1, Ch. 126, L. 1985; amd. Sec. 42, Ch. 112, L. 1991; amd. Sec. 1, Ch. 186, L. 1991; amd. Sec. 38, Ch. 349, L. 1993; amd. Sec. 504, Ch. 546, L. 1995; amd. Sec. 13, Ch. 507, L. 1997.

Cross-References

Penalty for driving under influence of alcohol or drugs — completion of alcohol information course, 61-8-714.

Penalty for driving with excessive blood alcohol concentration — completion of alcohol information course, 61-8-722.

53-24-205. Repealed. Sec. 15, Ch. 140, L. 1985.

History: En. 80-2703 by Sec. 4, Ch. 280, L. 1975; R.C.M. 1947, 80-2703.

53-24-206. Administration of financial assistance. (1) The department may apply for and receive grants, allotments, or allocations of funds or other assistance for purposes pertaining to the problems of chemical dependency or related social problems under laws and rules of the United States, any other state, or any private organization.

(2) The department may cooperate with any other government agency or private organization in programs on chemical dependency or related social problems. In carrying out cooperative programs, the department may make grants of financial assistance to government agencies and private organizations under terms and conditions agreed upon.

(3) (a) In administering proceeds derived from the liquor license tax, the beer license tax, or the wine tax, the department shall distribute those funds appropriated by the legislature. Money that is appropriated for distribution to approved private, nonprofit or public programs on a discretionary basis shall be distributed to those programs that can demonstrate that:

(i) the program is achieving the goals and objectives mutually agreed upon by the program and the department; and

(ii) the receipt of additional funds would be justified.

(b) The remainder of the proceeds shall be distributed to the counties for use by approved private, nonprofit or public programs. The distribution of these proceeds is statutorily appropriated as provided in 17-7-502 and must be distributed in the following manner:

(i) Eighty-five percent shall be allocated according to the proportion of each county's population to the state's population according to the most recent United States census.

(ii) Fifteen percent shall be allocated according to the proportion of the county's land area to the state's land area.

(c) Money distributed under subsection (3) may only be used for purposes pertaining to the problems of alcoholism.

History: En. Sec. 4, Ch. 303, L. 1969; Sec. 69-6204, R.C.M. 1947; redes. 80-2704 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2704; amd. Sec. 17, Ch. 38, L. 1979; amd. Sec. 4, Ch. 711, L. 1979; amd. Sec. 5, Ch. 406, L. 1983; amd. Sec. 3, Ch. 513, L. 1983; amd. Sec. 32, Ch. 703, L. 1985; amd. Sec. 2, Ch. 402, L. 1987.

53-24-207. Comprehensive program for treatment. (1) The department shall establish a comprehensive and coordinated program for the treatment of chemically dependent persons, intoxicated persons, and family members.

(2) The program must include:

(a) emergency treatment provided by a facility affiliated with or part of the medical service of a general hospital;

(b) inpatient treatment;

(c) intermediate treatment;

(d) outpatient treatment; and

(e) followup services.

(3) The department shall provide for adequate and appropriate treatment for alcoholics and intoxicated persons admitted under 53-24-301 through 53-24-303.

(4) All appropriate public and private resources must be coordinated with and used in the program if possible.

(5) The department shall prepare, publish, and distribute annually a list of all approved public and private treatment facilities.

History: En. 69-6215 by Sec. 5, Ch. 302, L. 1974; Sec. 69-6215, R.C.M. 1947; redes. 80-2712 by Sec. 6, Ch. 280, L. 1975; amd. Sec. 3, Ch. 414, L. 1977; R.C.M. 1947, 80-2712; amd. Sec. 5, Ch. 711, L. 1979; amd. Sec. 6, Ch. 406, L. 1983; amd. Sec. 3, Ch. 165, L. 1995.

53-24-208. Facility standards. (1) The department shall establish standards for approved treatment facilities that must be met for a treatment facility to be approved as a public or private treatment facility and fix the fees to be charged for the required inspections. The standards must be adopted by rule and may concern the health standards to be met and standards for the approval of treatment programs for patients.

(2) Facilities applying for approval shall demonstrate that a local need currently exists for proposed services and that the proposed services do not duplicate existing local services.

(3) The department shall periodically inspect approved public and private treatment facilities at reasonable times and in a reasonable manner.

(4) The department shall maintain a list of approved public and private treatment facilities.

(5) Each approved public or private treatment facility shall, on request, file with the department data, statistics, schedules, and information that the department reasonably requires. An approved public or private treatment facility that without good cause fails to furnish any data, statistics, schedules, or information as requested or files fraudulent returns of the requested material must be removed from the list of approved treatment facilities.

(6) The department, after holding a hearing in accordance with the Montana Administrative Procedure Act, may suspend, revoke, limit, or restrict an approval or refuse to grant an approval for failure to meet its standards.

(7) A district court may restrain any violation of this section, review any denial, restriction, or revocation of approval, and grant other relief required to enforce its provisions.

(8) Upon petition of the department and after a hearing held upon reasonable notice to the facility, a district court may issue a warrant to the department authorizing it to enter and inspect at reasonable times and examine the books and accounts of any approved public or private treatment facility that refuses to consent to inspection or examination by the department or that the department has reasonable cause to believe is operating in violation of this chapter.

(9) If a rehabilitation facility otherwise meets the requirements of subsection (2), the department may consider as eligible for approval during the accreditation period any rehabilitation facility that furnishes written evidence, including the recommendation for future compliance statements, of accreditation of its programs by the commission on accreditation of rehabilitation facilities. The department may, but is not required to, inspect a

facility considered eligible for approval under this section to ensure compliance with state approval standards.

History: En. 69-6216 by Sec. 6, Ch. 302, L. 1974; Sec. 69-6216, R.C.M. 1947; redes. 80-2713 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2713; amd. Sec. 7, Ch. 711, L. 1979; amd. Sec. 1, Ch. 393, L. 1991; amd. Sec. 6, Ch. 188, L. 1997.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

One-step licensing — inspection by other Department, Title 50, ch. 8.

53-24-209. Rules for acceptance for treatment. The department shall adopt rules for acceptance of persons into the treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of chemically dependent persons, intoxicated persons, and family members. In adopting the rules, the department must be guided by the following standards:

(1) If possible, a patient must be treated on a voluntary rather than an involuntary basis.

(2) A patient must be initially assigned or transferred to outpatient treatment unless found to require inpatient treatment.

(3) An individualized treatment plan must be prepared and maintained on a current basis for each person.

(4) Provision must be made for a continuum of coordinated treatment services so that a person who leaves a facility or a form of treatment will have available and use other appropriate treatment.

History: En. 69-6217 by Sec. 7, Ch. 302, L. 1974; Sec. 69-6217, R.C.M. 1947; redes. 80-2714 by Sec. 6, Ch. 280, L. 1975; amd. Sec. 4, Ch. 414, L. 1977; R.C.M. 1947, 80-2714; amd. Sec. 7, Ch. 406, L. 1983; amd. Sec. 4, Ch. 513, L. 1983; amd. Sec. 1, Ch. 164, L. 1995.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-24-210. Repealed. Sec. 56, Ch. 349, L. 1993.

History: En. 69-6225 by Sec. 19, Ch. 302, L. 1974; Sec. 69-6225, R.C.M. 1947; amd. and redes. 80-2722 by Sec. 3, Ch. 280, L. 1975; R.C.M. 1947, 80-2722(part); amd. Sec. 8, Ch. 406, L. 1983; amd. Sec. 43, Ch. 112, L. 1991.

53-24-211. County plan to be submitted to department. (1) Every 4 years each county shall submit to the department a comprehensive countywide plan for the treatment, rehabilitation, and prevention of chemical dependency. Each county shall also submit annual plan updates that include, at a minimum, allocation to approved programs of revenues generated by taxation on alcoholic beverages.

(2) The plan must have been approved by the board of county commissioners and must contain information regarding existing private and public chemical dependency programs within the county. The plan must also contain information regarding the current and future needs of the county for the treatment, rehabilitation, and prevention of chemical dependency.

(3) The department shall approve or disapprove the countywide plan and annual updates. If the department disapproves a plan or update, the county may submit another plan or update to the department. In distributing funds to approved programs in a county, the department shall give consideration to the county plan.

(4) The department may adopt rules regarding the submission, submission dates, updates, approval, and disapproval of plans and the use of plans by the department in determining the needs of the county for the treatment, rehabilitation, and prevention of chemical dependency. No money may be distributed to a county by the department for the treatment, rehabilitation, and prevention of chemical dependency if the county does not comply with these rules.

History: En. Sec. 8, Ch. 711, L. 1979; amd. Sec. 1, Ch. 499, L. 1981; amd. Sec. 2, Ch. 365, L. 1983; amd. Sec. 9, Ch. 406, L. 1983; amd. Sec. 2, Ch. 393, L. 1991.

53-24-212 through 53-24-214 reserved.

53-24-215. Repealed. Sec. 14, Ch. 507, L. 1997.

History: En. Sec. 1, Ch. 508, L. 1991; amd. Sec. 1, Ch. 249, L. 1995.

53-24-216. Repealed. Sec. 14, Ch. 507, L. 1997.

History: En. Sec. 2, Ch. 508, L. 1991.

53-24-217. Repealed. Sec. 14, Ch. 507, L. 1997.

History: En. Sec. 3, Ch. 508, L. 1991.

Part 3

Treatment of Alcoholics and Intoxicated Persons

53-24-301. Treatment of the chemically dependent. (1) An applicant for voluntary admission or court-referred admission to an approved public treatment facility shall obtain confirmation from a certified chemical dependency counselor that the applicant is chemically dependent and appropriate for inpatient, freestanding care as described in the administrative rules. The department shall adopt rules to establish policies and procedures governing assessment, patient placement, confirmation, and admission to an approved public treatment facility. If the proposed patient is a minor or an incompetent person, the proposed patient, a parent, legal guardian, or other legal representative may make the application.

(2) Subject to rules adopted by the department, the administrator of an approved public treatment facility may determine who is admitted for treatment. If a person is refused admission to an approved public treatment facility, the administrator, subject to departmental rules, shall refer the person to an approved private treatment facility for treatment if possible and appropriate.

(3) If a patient receiving inpatient care leaves an approved public treatment facility, the patient must be encouraged to consent to appropriate outpatient or intermediate treatment. If it appears to the administrator of the treatment facility that the patient is chemically dependent and requires help, the department shall arrange for assistance in obtaining supportive services and residential facilities.

(4) If a patient leaves an approved public treatment facility, with or against the advice of the administrator of the facility, the department shall make reasonable provisions for the patient's transportation to another facility or to the patient's home. If the patient has no home, the patient must be assisted in obtaining shelter. If the patient is a minor or an incompetent person, the request for discharge from an inpatient facility must be made by a parent, legal

guardian, or other legal representative or by the minor or incompetent, if the minor or incompetent person was the original applicant.

History: En. 69-6218 by Sec. 8, Ch. 302, L. 1974; Sec. 69-6218, R.C.M. 1947; redes. 80-2715 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2715; amd. Sec. 2, Ch. 164, L. 1995.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Appointment of guardian, 25-5-301.

Certification of chemical dependency counselors, Title 37, ch. 35.

Guardianship and conservatorship, Title 72, ch. 5.

53-24-302. Involuntary commitment of alcoholics. (1) A person may be committed to the custody of the department by the district court upon the petition of the person's spouse or guardian, a relative, the certifying physician, or the chief of any approved public treatment facility. The petition must allege that the person is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages and that the person has threatened, attempted, or inflicted physical harm on another and that unless committed is likely to inflict physical harm on another or is incapacitated by alcohol. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition must be accompanied by a certificate of a licensed physician who has examined the person within 2 days before submission of the petition unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal must be alleged in the petition. The certificate must set forth the physician's findings in support of the allegations of the petition. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, a parent or the person's legal guardian if the person is a minor, the administrator in charge of the approved public treatment facility to which the person has been committed for emergency care, and any other person the court believes advisable. A copy of the petition and certificate must be delivered to each person notified.

(3) At the hearing, the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person has a right to have a licensed physician of the person's own choosing conduct an examination and testify on the person's behalf. If the person has no funds with which to pay the physician, the reasonable costs of one examination and testimony must be paid by the county. The person must be present unless the court believes that the person's presence is likely to be injurious to the person. The person must be advised of the right to counsel, and if the person is unable to hire counsel, the court shall appoint an attorney to represent the person at the expense of the county. The court shall examine the person in open court or, if advisable, shall examine the person in chambers. If the person refuses an examination by a licensed physician and there is sufficient evidence to believe that the allegations of the petition are true or if the court believes that more medical evidence is

necessary, the court may make a temporary order committing the person to the department for a period of not more than 5 days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination by the department, the court finds that grounds for involuntary commitment have been established by clear and convincing evidence, it shall make an order of commitment to the department. The court may not order commitment of a person unless it determines that the department is able to provide adequate and appropriate treatment for the person and that the treatment is likely to be beneficial.

(5) A person committed under this section must remain in the custody of the department for treatment for a period of 40 days unless sooner discharged. At the end of the 40-day period, the person must automatically be discharged unless before expiration of the period the department obtains a court order from the district court of the committing district for the person's recommitment upon the grounds set forth in subsection (1) for a further period of 90 days unless sooner discharged. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) A person recommitted under subsection (5) who has not been discharged by the department before the end of the 90-day period must be discharged at the expiration of that period unless before expiration of the period the department obtains a court order from the district court of the committing district on the grounds set forth in subsection (1) for recommitment for a further period not to exceed 90 days. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under subsections (5) and (6) are permitted.

(7) Upon the filing of a petition for recommitment under subsection (5) or (6), the court shall fix a date for hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, the original petitioner under subsection (1) if different from the petitioner for recommitment, one of the person's parents or the person's legal guardian if the person is a minor, and any other person the court believes advisable. At the hearing, the court shall proceed as provided in subsection (3).

(8) A person committed to the custody of the department for treatment must be discharged at any time before the end of the period for which the person has been committed if either of the following conditions is met:

(a) in case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon another, that the person is no longer in need of treatment or the likelihood no longer exists; or

(b) in case of an alcoholic committed on the grounds of incapacity and the need of treatment, that the incapacity no longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(9) The court shall inform the person whose commitment or recommitment is sought of the person's right to contest the application, be represented by counsel at every stage of any proceedings relating to the person's commitment and recommitment, and have counsel appointed by the court or provided by the court if the person wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for the person regardless of the person's wishes. The person whose commitment or recommitment is sought must be informed of the right to be examined by a licensed physician of the person's choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) If a private treatment facility agrees with the request of a competent patient or the patient's parent, sibling, adult child, or guardian to accept the patient for treatment, the department may transfer the patient to the private treatment facility.

(11) A person committed under this section may at any time seek to be discharged from commitment by writ of habeas corpus or other appropriate means.

(12) The venue for proceedings under this section is the place in which the person to be committed resides or is present.

History: En. 69-6221 by Sec. 11, Ch. 302, L. 1974; Sec. 69-6221, R.C.M. 1947; redes. 80-2718 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2718; amd. Sec. 1, Ch. 133, L. 1983; amd. Sec. 61, Ch. 18, L. 1995.

Cross-References

Venue, Title 25, ch. 2.

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Habeas corpus, Title 46, ch. 22.

53-24-303. Treatment and services for intoxicated persons and persons incapacitated by alcohol. (1) A person who appears to be intoxicated in a public place and to be in need of help may be assisted to the person's home, an approved private treatment facility, or other health facility by the police, if the person consents to an offer for help.

(2) A person who appears to be incapacitated by alcohol must be taken into protective custody by the police and must be taken to an emergency medical service customarily used for incapacitated persons. The police, in detaining the person, are taking the person into protective custody and shall make every reasonable effort to protect the person's health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps for the officer's own protection. An entry or other record may not be made to indicate that the person taken into custody under this section has been arrested or charged with a crime.

History: En. 69-6219 by Sec. 9, Ch. 302, L. 1974; Sec. 69-6219, R.C.M. 1947; redes. 80-2716 by Sec. 6, Ch. 280, L. 1975; amd. Sec. 5, Ch. 414, L. 1977; R.C.M. 1947, 80-2716; amd. Sec. 1, Ch. 241, L. 1985; amd. Sec. 2, Ch. 165, L. 1995.

Cross-References

Criminal laws limitation, 53-24-106.

Public intoxication not criminal offense, 53-24-107.

53-24-304. Repealed. Sec. 4, Ch. 165, L. 1995.

History: **En. 69-6220 by Sec. 10, Ch. 302, L. 1974; Sec. 69-6220, R.C.M. 1947; redes. 80-2717 by Sec. 6, Ch. 280, L. 1975; amd. Sec. 51, Ch. 37, L. 1977; amd. Sec. 6, Ch. 414, L. 1977; R.C.M. 1947, 80-2717; amd. Sec. 18, Ch. 38, L. 1979.**

53-24-305. Visitation and communication rights of patients. (1) Subject to reasonable rules regarding hours of visitation which the department may adopt, patients in any approved treatment facility shall be granted opportunities for adequate consultation with counsel and for continuing contact with family and friends consistent with an effective treatment program.

(2) Neither mail nor other communication to or from a patient in any approved treatment facility may be intercepted, read, or censored. The administrator may adopt reasonable rules regarding the use of telephone by patients in approved treatment facilities.

History: **En. 69-6223 by Sec. 13, Ch. 302, L. 1974; Sec. 69-6223, R.C.M. 1947; redes. 80-2720 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2720.**

53-24-306. Records of chemically dependent persons, intoxicated persons, and family members. (1) The registration and other records of treatment facilities shall remain confidential and are privileged to the patient.

(2) Notwithstanding subsection (1), the department may make available in accordance with Title 50, chapter 16, part 5, information from patients' records for purposes of research into the causes and treatment of chemical dependency. Information under this subsection shall not be published in a way that discloses patients' names or other identifying information.

History: **En. 69-6222 by Sec. 12, Ch. 302, L. 1974; Sec. 69-6222, R.C.M. 1947; redes. 80-2719 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2719; amd. Sec. 10, Ch. 406, L. 1983; amd. Sec. 29, Ch. 632, L. 1987.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Public records, Title 2, ch. 6.

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CHAPTER 30

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Chapter Cross-References

Exchange of offenders under treaty, 53-1-106.

Department of Corrections, Title 53, ch. 1, part 2.

Part 1
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Part Cross-References

Sentences for certain offenses committed in state prison, 46-18-220.

53-30-101. Location and function of prisons — definitions. (1) The correctional facility at Deer Lodge is the Montana state prison, and its primary function is to provide for the custody, treatment, training, and rehabilitation of adult male criminal offenders.

(2) The correctional facility located in Billings is the Montana women's prison, and its primary function is to provide for the custody, treatment, training, and rehabilitation of adult female criminal offenders.

(3) As used in this title, unless the context indicates otherwise, the following definitions apply:

(a) "Montana state prison" means the correctional facility located at Deer Lodge.

(b) "Montana women's prison" or "women's prison" means the correctional facility located at Billings.

(c) "State prison" means:

(i) the Montana state prison;

(ii) the Montana women's prison;

(iii) a state correctional facility portion of a Montana regional correctional facility;

(iv) a detention center in another jurisdiction detaining inmates from Montana pursuant to 53-30-106;

(v) a private correctional facility licensed by the department of corrections or a private correctional facility portion of a Montana regional correctional facility licensed by the department of corrections; or

(vi) a combination of the facilities listed in this subsection (3)(c).

History: En. Sec. 24, Ch. 199, L. 1965; R.C.M. 1947, 80-1901; amd. Sec. 9, Ch. 651, L. 1991; amd. Sec. 15, Ch. 579, L. 1993; amd. Sec. 26, Ch. 624, L. 1993; amd. Sec. 62, Ch. 18, L. 1995; amd. Sec. 505, Ch. 546, L. 1995; amd. Sec. 24, Ch. 189, L. 1997; amd. Sec. 15, Ch. 491, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 491 in (1) deleted former second sentence that read: "The custody, treatment, training, and rehabilitation of adult male offenders may also occur at a correctional facility in another jurisdiction pursuant to an agreement as provided in 53-30-106"; substituted definitions of Montana state prison and Montana women's prison for former definitions that read: "(b) "Montana state prison" means:

(i) the correctional facility located at Deer Lodge;

(ii) a Montana regional correctional facility; or

(iii) a detention center in another jurisdiction detaining inmates from Montana pursuant to 53-30-106.

(c) "Montana women's prison" or "women's prison" means:

(i) the correctional facility located at Billings;

(ii) a Montana regional correctional facility; or

(iii) a detention center in another jurisdiction detaining inmates from Montana pursuant to 53-30-106"; substituted state prison for Montana prison as defined term, in (iii) inserted "a state correctional facility portion of", and inserted (v) regarding private correctional facility; and made minor changes in style. Amendment effective April 27, 1999.

Cross-References

Disposition of contraband in correctional institution, 53-1-105.

53-30-102. Qualifications of warden of state prison and warden of women's prison. The warden of the Montana state prison and the warden of the women's prison must be persons trained through education and experience in directing a training, rehabilitation, or custodial program in a penal institution.

History: En. Sec. 25, Ch. 199, L. 1965; R.C.M. 1947, 80-1902; amd. Sec. 10, Ch. 651, L. 1991; amd. Sec. 506, Ch. 546, L. 1995; amd. Sec. 25, Ch. 189, L. 1997.

53-30-103. Repealed. Sec. 1, Ch. 359, L. 1985.

History: En. Sec. 26, Ch. 199, L. 1965; amd. Sec. 1, Ch. 232, L. 1969; R.C.M. 1947, 80-1903.

53-30-104. Punishment of inmates. No barbarous punishments may be prescribed for an inmate of the state prison, nor shall an inmate, as punishment, be deprived of his normal provision of food while being compelled to work the usual number of hours per day.

History: En. Sec. 27, Ch. 199, L. 1965; R.C.M. 1947, 80-1904.

Cross-References

Criminal justice policy — rights of convicted, Art. II, sec. 28, Mont. Const.

Correctional policy, 46-18-101.

53-30-105. Repealed. Secs. 12(2), 13, Ch. 372, L. 1995.

History: En. Sec. 28, Ch. 199, L. 1965; amd. Sec. 1, Ch. 219, L. 1967; amd. Sec. 1, Ch. 113, L. 1974; amd. Sec. 1, Ch. 312, L. 1975; R.C.M. 1947, 80-1905; amd. Sec. 1, Ch. 588, L. 1981; amd. Sec. 1, Ch. 130, L. 1983; amd. Sec. 1, Ch. 240, L. 1991; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 16, Ch. 579, L. 1993; amd. Sec. 10, Ch. 372, L. 1995; amd. Sec. 507, Ch. 546, L. 1995.

53-30-106. Excessive inmate population — confinement of inmates in other institutions. (1) If the inmate population of a correctional institution or system exceeds the emergency capacity for 30 consecutive days, the director of the department of corrections may declare that the emergency capacity has been exceeded and temporarily stop admissions to the institution or system. The director shall notify each sheriff and district court that new inmates will not be accepted by the department for admission into the institution or system until the inmate population is reduced to 95% or less of the emergency capacity. Persons committed to the department and persons sought to be admitted remain in the department's legal custody but must be kept in a detention center in the jurisdiction holding them. In the event the jurisdiction holding the inmate is at maximum capacity, the inmate may be placed in an available detention center in another jurisdiction. The department shall reimburse that jurisdiction for the cost of detention for the period beyond the normal time of delivery to a correctional institution administered by the department. Reimbursement must be at a rate mutually agreeable to the department and the jurisdiction holding the person. The rate must cover the reasonable costs of the holding jurisdiction. Expenses for medication, medical services, or hospitalization for persons confined in a detention center under this section must be paid by the department.

(2) The department may enter into contracts with the federal government, other states, or the commissioners of counties that have suitable detention centers for confining inmates committed to a correctional institution or system administered by the department, either because a correctional institution or system has exceeded its emergency capacity or because the department has no institution that is adequate for certain inmates.

(3) Within budgetary limits, the department may also enter into contracts with public or private corporations for the confinement of selected inmates if suitable programs have been established.

History: En. Sec. 30, Ch. 199, L. 1965; R.C.M. 1947, 80-1907; amd. Sec. 1, Ch. 304, L. 1981; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 736, L. 1991; amd. Sec. 508, Ch. 546, L. 1995.

Cross-References

Public contracts generally, Title 18, ch. 1.

53-30-107. Repealed. Sec. 1, Ch. 41, L. 1983.

History: En. Sec. 1, Ch. 221, L. 1969; amd. Sec. 54, Ch. 120, L. 1974; R.C.M. 1947, 80-1909.

53-30-108. Repealed. Sec. 1, Ch. 41, L. 1983.

History: En. Sec. 2, Ch. 221, L. 1969; R.C.M. 1947, 80-1910.

53-30-109. Repealed. Sec. 1, Ch. 41, L. 1983.

History: En. Sec. 3, Ch. 221, L. 1969; R.C.M. 1947, 80-1911.

53-30-110. Expense of trial for offenses committed in prison. Whenever a trial of any person takes place under any of the provisions of 45-7-306 and whenever a prisoner in the state prison is tried for any crime committed in prison, the county clerk of the county where the trial is held shall make out a statement of all the costs incurred by the county for the trial of the case and of guarding and keeping the prisoner, properly certified by a district judge of the county. The statement must be sent to the department of corrections for its approval. After such approval, the department shall pay the costs out of the money appropriated for the support of the state prison to the county treasurer of the county where the trial was held.

History: En. Sec. 226, Pen. C. 1895; re-en. Sec. 8228, Rev. C. 1907; re-en. Sec. 10872, R.C.M. 1921; Cal. Pen. C. Sec. 111; re-en. Sec. 10872, R.C.M. 1935; Sec. 94-4209, R.C.M. 1947; redes. 80-1912 and amd. by Sec. 27, Ch. 513, L. 1973; amd. Sec. 47, Ch. 37, L. 1977; R.C.M. 1947, 80-1912; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 509, Ch. 546, L. 1995.

Cross-References

Special provisions for certain charges related to criminal prosecutions, 7-6-2427.

53-30-111. Clothing and money furnished on discharge or parole. The state prison shall furnish suitable clothing to a discharged or paroled inmate. An inmate discharged and delivered to the custody of the federal government or another state must receive $5. All other discharged or paroled inmates may receive "gate money" in an amount up to $100. The department of corrections may establish rules that allow it to deduct up to one-fourth of an inmate's wages earned under 53-30-132 and hold that money in a special account to be disbursed to the inmate when the inmate is discharged or paroled. This amount is in addition to the "gate money".

History: **En. Sec. 29, Ch. 199, L. 1965; amd. Sec. 1, Ch. 276, L. 1975; R.C.M. 1947, 80-1906; amd. Sec. 1, Ch. 438, L. 1981; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 510, Ch. 546, L. 1995; amd. Sec. 3, Ch. 315, L. 1997.**

Cross-References

Purchases exempt from general requirements, 18-4-133.

53-30-112 through 53-30-130 reserved.

53-30-131. Prison industries training program — purpose and scope. (1) In addition to any correctional facility industry operated at the Montana state prison, the department of corrections shall conduct a prison industries training program.

(2) The purpose of the prison industries training program is to:

(a) provide innovative and progressive inmate reformation and rehabilitation possibilities by exposing inmates to worthwhile training;

(b) prepare inmates for release by providing industries at the prison that utilize their skills, thus providing experience beyond mere training, inculcating inmates with good production and work habits, and providing them with a means to earn money that will be available to them upon release.

(3) The prison industries training program consists of vocational training, on-the-job training, and production experience. The department may contract with public and private vocational education entities to provide this training.

(4) The program may provide training and experience involving cultivation, production, repair, construction, refurbishment, service, and related processes involving personal property, including but not limited to such items as crops, livestock, furniture, office and electrical equipment, and motor vehicles. The products and services, with the exception of livestock and agricultural products produced from the Montana state prison ranch and products or services of a federally certified prison industries program, may be provided only to state agencies, local government units, school districts, authorities, and other governmental entities.

(5) The department may donate surplus food grown or produced at the prison to local food banks, nonprofit organizations, and low-income persons.

History: **En. Sec. 1, Ch. 3, Sp. L. 1982; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 3, Ch. 471, L. 1993; amd. Sec. 511, Ch. 546, L. 1995; amd. Sec. 4, Ch. 315, L. 1997.**

53-30-132. Inmate participation and status in prison work programs — prison industries and vocational training program — wages and benefits. (1) The department of corrections may:

(a) establish prison industries that will result in the production or manufacture of products and the rendering of services that may be needed by any department or agency of the state or any political subdivision of the state, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of inmates in institutions;

(b) obtain federal certification of specific prison industries programs in order to gain access to interstate markets for prison industries products;

(c) contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction and for the employment of inmates in federally certified prison industries programs;

(d) print catalogs describing goods manufactured or produced by prison industries and distribute the catalogs;

(e) fix the sale price for goods produced or manufactured by prison industries. Prices may not exceed prices existing in the open market for goods of comparable quality.

(f) require a correctional facility to purchase needed goods from other correctional facilities;

(g) provide for the repair and maintenance of property and equipment of institutions by inmates;

(h) provide for the removal of graffiti from property and equipment of institutions and the removal of litter from the property of institutions, public roads, and public parks by inmates;

(i) provide for construction projects, up to the aggregate sum of $200,000 for each project, performed by inmates. The department of administration may:

(i) exempt projects authorized by this subsection from the provisions of Title 18, chapter 2, relating to construction, public bidding, bonding, or contracts; and

(ii) exempt inmates who provide labor for those projects from the labor and wage requirements of Title 18, chapter 2, part 4. Inmates providing labor for projects under this subsection must be paid a rate of pay as provided in subsection (5).

(j) provide for the repair and maintenance by prison industries of furniture and equipment of any state agency;

(k) provide for the manufacture by prison industries of motor vehicle license plates and other related articles;

(l) sell manufactured or agricultural products and livestock on the open market;

(m) provide for the manufacture by prison industries of highway, road, and street marking signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract;

(n) pay an inmate from receipts from the sale of products produced or manufactured or services rendered in a program in which the inmate is working;

(o) collect 15% of the net wages paid to an inmate employed in a federally certified prison industries program for deposit in the Montana crime victims compensation and assistance account established under 53-9-109; and

(p) collect from an inmate employed in a federally certified prison industries program charges for room and board consistent with charges established by the director for inmates assigned to prerelease centers.

(2) Except as provided in subsection (3), furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale to international markets.

(3) Any state institution, facility, or program operated by the department of corrections may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4.

(4) While engaged in on-the-job training and production, inmates not employed in a federally certified prison industries program may be paid a wage in accordance with subsection (5). Inmates employed in a federally certified prison industries program must be paid as provided in subsection (5).

(5) (a) Except as provided for in subsection (5)(b), payment for the performance of work may be based on the following criteria:

(i) knowledge and skill;

(ii) attitude toward authority;

(iii) physical effort;

(iv) responsibility for equipment and materials; and

(v) regard for safety of others.

(b) The maximum rate of pay must be determined by the appropriation established for the program, except that an inmate employed in a federally certified prison industries program must be paid at a rate not less than the rate paid for similar work in the locality where the inmate performs the work.

(6) Premiums for workers' compensation and occupational disease coverage for federally certified prison industries programs must be paid by the prison industries program or by the department of corrections. If the department of corrections pays the premium, reimbursement for premium payments for workers' compensation and occupational disease coverage must be made to the department of corrections by the private company contracting with the federally certified prison industries program for services and products.

(7) Inmates not working in a federally certified prison industries training program are not employees, either public or private, and employment rights accorded other classes of workers do not apply to the inmates. Inmates working in a federally certified prison industry program are entitled to coverage and benefits as provided in 39-71-744.

(8) Able-bodied persons committed to a state prison as adult offenders must be required to perform work as provided for by the department of corrections, including the manufacture of products or the rendering of services. In order to ensure the public safety, the department may secure inmates performing work.

History: En. Sec. 1, Ch. 3, Sp. L. 1982; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 4, Ch. 471, L. 1993; amd. Sec. 11, Ch. 372, L. 1995; amd. Sec. 512, Ch. 546, L. 1995; amd. Sec. 5, Ch. 315, L. 1997; amd. Sec. 5, Ch. 513, L. 1997; amd. Sec. 16, Ch. 491, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 491 in (8) substituted "state prison" for "Montana prison". Amendment effective April 27, 1999.

Cross-References

Employment rights, Title 39, ch. 2.

53-30-133. Administration of prison industries training program. (1) (a) The prison industries training program need not be a self-supporting program. The department of corrections may enter into contracts and establish prices for products or services produced by this program. Within budgetary restrictions, the department shall establish prices that tend to maximize the amount of work available for inmates. All revenue raised through the program may be used only for the program and payment of inmate wages.

(b) State agencies, local governments, school districts, authorities, and other local government entities are encouraged to explore the possibilities of using the prison industries training program. State agencies shall cooperate with the department of corrections in notifying governmental entities within the state of the program and of the services and products that are available.

(2) (a) The department of corrections shall adopt rules implementing this program. Any price lists established by the department are exempt from the provisions of Title 2, chapter 4, but the department may, if it considers it an effective method of dissemination, publish the price lists in the Montana Administrative Register or the Administrative Rules of Montana, or both.

(b) The department of corrections is subject to program audits of the prison industries training program by the legislative auditor.

History: En. Sec. 1, Ch. 3, Sp. L. 1982; amd. Sec. 44, Ch. 112, L. 1991; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 39, Ch. 349, L. 1993; amd. Sec. 5, Ch. 471, L. 1993; amd. Sec. 513, Ch. 546, L. 1995.

Cross-References

Legislative Audit Act, Title 5, ch. 13.

53-30-134 through 53-30-140 reserved.

53-30-141. Extension of limits of confinement. (1) The department of corrections may extend the limits of confinement of the Montana state prison for purposes of housing outside the prison fence inmates who:

(a) are employed in ranch or agricultural industry programs; and

(b) have demonstrated sufficient reliability and trustworthiness.

(2) Housing units outside the confines of the prison fence may be created by renovation of existing buildings or by the erection of modular-type units and associated facilities on the prison ranch.

(3) For the purpose of expediting the acquisition and construction of housing units authorized in subsection (2) the department of administration may exempt the project from provisions of Montana law relating to the employment of architects, advertising, labor, and wages. The department of administration need not comply with any state bidding requirements that would preclude a sole source purchase.

History: En. Secs. 1, 2, Ch. 6, Sp. L. 1982; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 514, Ch. 546, L. 1995.

Cross-References

State construction contracts — architects, advertising, labor, and wages, Title 18, ch. 2.

53-30-142. Escape from extended confinement. Purposeful or knowing failure of an inmate to remain within the extended limits of his confinement or to return within the time prescribed by prison officials to the place of confinement designated by the department is an escape punishable as provided in 45-7-306.

History: En. Sec. 3, Ch. 6, Sp. L. 1982.

53-30-143 through 53-30-150 reserved.

53-30-151. Prison maintenance by inmates. An inmate of a state prison may be required to:

(1) keep the living quarters assigned to that inmate clean and orderly;

(2) perform general maintenance and repair work on prison grounds and facilities and assist in providing services essential to the administration of the prison, including but not limited to food and laundry services.

History: En. Sec. 1, Ch. 7, Sp. L. 1982; amd. Sec. 27, Ch. 189, L. 1997; amd. Sec. 17, Ch. 491, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 491 in introduction substituted "state prison" for "Montana prison". Amendment effective April 27, 1999.

Cross-References

Use of inmate labor — not bargainable in collective bargaining agreement, 39-31-312.

53-30-152. Inmates not employees. An inmate working pursuant to 53-30-151 is not an employee, either public or private, and employment rights accorded other classes of workers do not apply to such inmates.

History: En. Sec. 2, Ch. 7, Sp. L. 1982.

Cross-References

Employment rights, Title 39, ch. 2.

Part 2

Youthful Offenders (Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered and Repealed:

53-30-201. Repealed. Sec. 25, Ch. 361, L. 1983.

53-30-202. Renumbered 52-5-101.

53-30-203. Renumbered 52-5-102.

53-30-204. Renumbered 52-5-103.

53-30-205. Renumbered 52-5-104.

53-30-206. Renumbered 52-5-105.

53-30-207. Renumbered 52-5-106.

53-30-208. Renumbered 52-5-107.

53-30-209. Renumbered 52-5-108.

53-30-210. Renumbered 52-5-109.

53-30-211. Renumbered 52-5-110.

53-30-212. Renumbered 52-5-111.

53-30-213. Renumbered 52-5-112.

53-30-214. Renumbered 52-5-113.

53-30-215. Renumbered 52-5-114.

53-30-216 through 53-30-224 reserved.

53-30-225. Renumbered 52-5-125.

53-30-226. Renumbered 52-5-126.

53-30-227. Renumbered 52-5-127.

53-30-228. Renumbered 52-5-128.

53-30-229. Renumbered 52-5-129.

Histories of Repealed Sections:

53-30-201. En. Sec. 20, Ch. 320, L. 1967; R.C.M. 1947, 80-1704.

Part 3

Community Corrections Act

53-30-301. Short title. This part may be cited as the "Montana Community Corrections Act".

History: En. Sec. 1, Ch. 554, L. 1991.

53-30-302. Purpose. It is the purpose of this part to:

(1) encourage the development of community corrections facilities and programs by units of local government, tribal governments, and nongovernmental agencies;

(2) reduce court commitments to the state prisons through diversion of offenders determined appropriate by the community corrections board to community corrections facilities and programs;

(3) reduce the use of jail space for offenders who need a structured environment, treatment, counseling, and supervision but who may not require incarceration;

(4) provide a local facility for employed offenders so that they may maintain their employment under a structured environment and receive treatment, counseling, and supervision;

(5) provide a procedure by which units of local government, tribal governments, and nongovernmental agencies may provide corrections services to the sentencing courts; and

(6) include citizen participation in the policymaking and program planning related to community corrections facilities and programs through the formation of local community corrections boards.

History: En. Sec. 2, Ch. 554, L. 1991; amd. Sec. 6, Ch. 322, L. 1997.

Cross-References

Correctional policy, 46-18-101.

53-30-303. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Community corrections board" means a community corrections board as provided in 53-30-312.

(2) "Community corrections facility or program" means a community-based or community-oriented facility or program, other than a jail, that:

(a) is established by a local or tribal government and operated by a unit of local government, a tribal government, or a nongovernmental agency; and

(b) provides programs and services to aid offenders in:

(i) obtaining and holding regular employment;

(ii) enrolling in and maintaining academic courses;

(iii) participating in vocational training programs;

(iv) utilizing the resources of the community to meet their personal and family needs;

(v) obtaining the benefits of specialized treatment services that exist within the community; and

(vi) paying restitution or performing community restitution to crime victims.

(3) "Department" means the department of corrections created in 2-15-2301.

(4) "Nongovernmental agency" means a person, private, nonprofit agency, corporation, association, labor organization, or other nongovernmental entity.

(5) "Offender" means a person who has entered a plea of guilty or nolo contendere or has been convicted of a criminal offense.

(6) "Tribal government" means a federally recognized Indian tribe within the state of Montana.

(7) "Unit of local government" means a county, city, town, or city-county consolidated government.

History: En. Sec. 3, Ch. 554, L. 1991; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 515, Ch. 546, L. 1995; amd. Sec. 7, Ch. 322, L. 1997; amd. Sec. 23, Ch. 395, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 395 in definition of offender inserted "or nolo contendere". Amendment effective October 1, 1999.

53-30-304 through 53-30-310 reserved.

53-30-311. Community corrections facilities and programs operated by units of local government. (1) A unit of local government may establish, maintain, and operate any community corrections facilities and programs that it considers necessary to serve its own needs or the needs of offenders who are sentenced to the facility or program by a judge as provided in 53-30-321.

(2) A unit of local government may enter into a contract or agreement with the department for the purpose of providing community corrections facilities and programs for offenders.

History: En. Sec. 4, Ch. 554, L. 1991.

53-30-312. Creation of community corrections boards — membership — appointment — terms — compensation. (1) A unit of local government, the governing bodies of two or more units of local government, or a tribal government may establish a community corrections board.

(2) A community corrections board consists of three to seven members, must, when possible, be gender-balanced and have racial parity, and must include:

(a) one local law enforcement officer;

(b) one probation and parole officer; and

(c) one member of the public.

(3) Members of a community corrections board must be appointed by the chief executive officer of the unit of local government or the tribal government in the judicial district in which community corrections facilities or programs are established.

(4) Members of a community corrections board shall serve for a term of 4 years.

(5) Members of a community corrections board shall serve without compensation except as otherwise decided by the units of local government or a tribal government.

History: En. Sec. 5, Ch. 554, L. 1991; amd. Sec. 8, Ch. 322, L. 1997.

53-30-313. Powers and duties of community corrections boards. (1) A community corrections board may establish and enforce standards for:

(a) the operation of community corrections facilities and programs operated by the unit of local government or a tribal government served by the community corrections board; and

(b) the conduct of offenders placed in local community corrections facilities and programs.

(2) The community corrections board, together with the judicial district, shall establish procedures for screening offenders who are to be placed in the community corrections facility or program. The screening must take into account the aptitude, attitude, and social and occupational skills of the offender and the risk of harm the offender may present to the offender and others.

(3) A community corrections board may accept, reject, or reject after acceptance the placement of any offender in the community corrections facility or program. If an offender is rejected by the community corrections board after initial acceptance, the sheriff of the county in which the facility or program is located must take custody of the offender. The community corrections board shall notify in writing the sentencing judge who, after considering the board's reasons for rejection, shall appropriately modify the sentencing order.

History: En. Sec. 6, Ch. 554, L. 1991; amd. Sec. 9, Ch. 322, L. 1997.

53-30-314. Community corrections facilities and programs operated by tribal governments. (1) A tribal government may establish, maintain, and operate a community corrections facility or program to serve the needs of offenders who are sentenced to the facility or program by a judge as provided in 53-30-321.

(2) A tribal government operating a community corrections facility or program may accept, reject, or reject after acceptance the placement of any offender in the facility or program pursuant to an agreement with a unit of local government, a nongovernmental agency, or a judicial district. If an offender is rejected by the tribal government after initial appearance and the offender is a court referral, the sheriff of the county in which the facility or program is located must take custody of the offender. The tribal government shall notify in writing the sentencing judge who, after considering the tribal government's reasons for rejection, shall appropriately modify the sentencing order.

History: En. Sec. 7, Ch. 554, L. 1991; amd. Sec. 10, Ch. 322, L. 1997.

53-30-315. Community corrections facilities and programs operated by nongovernmental agencies. (1) Except as provided in subsection (2), a nongovernmental agency may establish, maintain, and operate a community corrections facility or program to serve the needs of offenders who are sentenced to the facility or program by a judge as provided in 53-30-321.

(2) A nongovernmental agency may not establish a community corrections facility or program unless approved by the local community corrections board in a local government or tribal government that has established a community corrections board.

(3) A nongovernmental agency operating a community corrections facility or program may accept, reject, or reject after acceptance the placement of any offender in the facility or program pursuant to a contract or agreement with a unit of local government, a tribal government, or a judicial district. If an offender is rejected by the nongovernmental agency after initial acceptance and the offender is a court referral, the sheriff of the county in which the facility or program is located must take custody of the offender. The nongovernmental agency shall notify in writing the sentencing judge who, after considering the agency's reasons for rejection, shall appropriately modify the sentencing order.

History: En. Sec. 8, Ch. 554, L. 1991; amd. Sec. 11, Ch. 322, L. 1997.

53-30-316 through 53-30-320 reserved.

53-30-321. Authority of judge to utilize community corrections facilities or programs — restrictions. (1) Subject to the restrictions contained in subsection (2), a judge may order placement of an offender in a community corrections facility or program operated by a unit of local government, a tribal government, or a nongovernmental agency.

(2) A judge may not order placement of an offender in a residential community corrections facility or program for a period exceeding 1 year. After completing the residential community corrections portion of a sentence, an offender shall serve the remainder of the sentence under normal probation supervision, if applicable.

(3) An offender is not eligible for parole while serving a sentence in a community corrections facility or program.

(4) The probation and parole officers for the judicial district shall include in their presentence report to the sentencing judge recommendations for utilization of a community correctional facility or program that has been approved for use by the judicial district.

History: En. Sec. 9, Ch. 554, L. 1991; amd. Sec. 12, Ch. 322, L. 1997.

Cross-References

Form of sentence, Title 46, ch. 18, part 2.

Sentences that may be imposed, 46-18-201.

53-30-322. Powers and responsibilities of department. The department may:

(1) upon the request of a local community corrections board, provide assistance in the planning of community corrections facilities and programs; and

(2) contract with a community corrections facility or program for the provision of services for offenders under the custody of the department. The contract must address facility or program review and evaluation, accounting and reporting standards, and reimbursement of the facility or program.

History: En. Sec. 10, Ch. 554, L. 1991; amd. Sec. 13, Ch. 322, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-30-323. Offender payments. (1) An offender placed in a community corrections facility or program under this part shall execute a written contract or agreement with the director of the facility or program, setting forth the terms and conditions for placement in the facility or program. The contract or agreement must provide that a portion of any money received from employment of the offender be set aside for reimbursement to the community corrections facility. Reimbursement to the community corrections facility or program for the cost of the room, board, and services is to be paid at a rate established under 53-1-501.

(2) In a community corrections facility or program, the offender has the primary obligation to obtain employment, but the department of labor and industry shall provide assistance to the offender in obtaining suitable employment.

History: En. Sec. 11, Ch. 554, L. 1991; amd. Sec. 1, Ch. 172, L. 1993.

53-30-324. Repealed. Sec. 15, Ch. 322, L. 1997.

History: En. Sec. 12, Ch. 554, L. 1991.

53-30-325. Repealed. Sec. 15, Ch. 322, L. 1997.

History: En. Sec. 13, Ch. 554, L. 1991.

53-30-326. Escape from custody. An offender is guilty of escape and shall be punished as provided in 45-7-306 if, without proper authorization, the offender:

(1) fails to remain within the extended limits of the offender's confinement or fails to return within the time specified to a community corrections facility or program to which the offender has been assigned, sentenced, or transferred; or

(2) leaves the offender's place of employment or neglects or fails to return to the community corrections facility or program after being specifically ordered to do so.

History: En. Sec. 15, Ch. 554, L. 1991; amd. Sec. 14, Ch. 322, L. 1997.

Part 4

Boot Camp Incarceration Program

53-30-401. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Reduction of sentence" includes changing an incarceration sentence to a suspended sentence.

History: En. Sec. 1, Ch. 463, L. 1993; amd. Sec. 516, Ch. 546, L. 1995; amd. Sec. 8, Ch. 505, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 505 at end of definition of reduction of sentence substituted "suspended sentence" for "grant of probation". Amendment effective April 28, 1999.

Applicability: Section 13(3), Ch. 505, L. 1999, provided: "[Sections 8 and 9] [53-30-401 and 53-30-403] apply to all persons under the custody of the department of corrections on or after [the effective date of this act]." Effective April 28, 1999.

53-30-402. Sentence reduction for offenders. A sentencing court retains jurisdiction for purposes of this section. A sentencing court may order a reduction of sentence for a convicted offender who:

(1) is certified by the department as having successfully completed the boot camp incarceration program; and

(2) applies to the court within 1 year after beginning to serve a sentence at a correctional institution.

History: En. Sec. 2, Ch. 463, L. 1993.

53-30-403. Boot camp incarceration program — eligibility — rulemaking. (1) The department shall establish a boot camp incarceration program for offenders incarcerated in a correctional institution.

(2) In order to be eligible for participation in the boot camp incarceration program, an inmate must:

(a) be serving a sentence of at least 1 year in a Montana correctional institution for a felony offense other than a felony punishable by death, except as provided in 46-18-201(1)(a)(xiv);

(b) obtain the concurrence of the sentencing court; and

(c) pass a physical examination to ensure sufficient health for participation.

(3) The boot camp incarceration program must include:

(a) as a major component, a strong emphasis on work, physical activity, physical conditioning, and good health practices;

(b) a strong emphasis on intensive counseling and treatment programming designed to correct criminal and other maladaptive thought processes and behavior patterns and to instill self-discipline and self-motivation;

(c) a detailed, clearly written explanation of program goals, objectives, rules, and criteria that must be provided to, read by, and signed by all prospective enrollees; and

(d) a maximum enrollment period of 120 days.

(4) (a) Inmate participation in the boot camp incarceration program must be voluntary. The admission of an inmate to the program is discretionary with the department. Enrollment may be revoked only:

(i) at the participant's request; or

(ii) upon written departmental documentation of a participant's failure or refusal to comply with program requirements.

(b) A revocation of program enrollment is not subject to appeal. An inmate may not be admitted to the boot camp incarceration program more than twice.

(5) The department may adopt rules for the establishment and administration of the boot camp incarceration program.

History: En. Sec. 3, Ch. 463, L. 1993; amd. Sec. 9, Ch. 505, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 505 in (2)(a) after "by" deleted "life imprisonment or" and after "death" inserted exception clause; and in (2)(b) substituted "obtain the concurrence of the sentencing court" for "be less than 35 years of age". Amendment effective April 28, 1999.

Applicability: Section 13(3), Ch. 505, L. 1999, provided: "[Sections 8 and 9] [53-30-401 and 53-30-403] apply to all persons under the custody of the department of corrections on or after [the effective date of this act]." Effective April 28, 1999.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 5
Regional Correctional Facility Act

53-30-501. Short title. This part may be known and cited as the "Regional Correctional Facility Act".

History: En. Sec. 1, Ch. 316, L. 1995.

53-30-502. Purpose. It is the purpose of this part to provide a method by which the state and local governments can make the most efficient use of their powers and resources by enabling them to cooperate to fulfill their respective responsibilities of providing services and facilities for the incarceration and rehabilitation of criminal offenders at regional correctional facilities. The state and local governments are encouraged to use innovative means in accomplishing this purpose.

History: En. Sec. 2, Ch. 316, L. 1995.

53-30-503. Definitions. As used in this part, the following definitions apply:

(1) "Corporation" means an entity organized and existing pursuant to Title 35, chapter 1 or 2, and approved or designated by a local governmental entity.

(2) "Department" means the department of corrections.

(3) "Interlocal cooperation commission" means a commission established in accordance with Title 7, chapter 11, part 2.

(4) "Local governmental entity" means:

(a) a local governmental unit;

(b) a multijurisdictional service district; or

(c) an interlocal cooperation commission.

(5) "Multijurisdictional service district" means a district established in accordance with Title 7, chapter 11, part 11.

(6) "Regional correctional facility" means a facility for the housing of persons charged with or convicted of a criminal offense that is a joint detention center and correctional facility and that is designed, constructed, or operated under this part by a local governmental entity, a corporation, the department, or any combination of a local governmental entity, a corporation, and the department.

History: **En. Sec. 3, Ch. 316, L. 1995; amd. Sec. 28, Ch. 189, L. 1997; amd. Sec. 1, Ch. 224, L. 1997; amd. Sec. 18, Ch. 491, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 491 in definition of regional correctional facility near beginning after "means a" deleted "correctional", substituted phrase regarding facility for housing of persons that is joint detention center and correctional facility for "except the Montana state prison, the women's prison, or the Swan River boot camp", and at end after "and the department" deleted "for the housing of convicted felons". Amendment effective April 27, 1999.

53-30-504. Authority to enter into contracts — terms — financing. (1) The department may contract with one or more local governmental entities or corporations for the housing of and provision of services to inmates sentenced to the department or the department's correctional institutions at a regional correctional facility designed, financed, constructed, or operated by a local governmental entity, a corporation, the department, or any combination of a local governmental entity, a corporation, and the department.

(2) The contract must be authorized and approved by the governor, the department, and the governing body of the local governmental entity or the corporation, whichever is party to the contract. The contract must set forth fully the purposes, powers, rights, and responsibilities of each party to the contract and address necessary and proper matters set forth in 7-11-105.

(3) A contract may include an agreement to jointly design, finance, construct, and operate a regional correctional facility.

(4) The department may not enter into a contract unless the department and the local governmental entity or corporation has the legal authority and the ability to finance its share of the costs under the contract.

(5) A regional correctional facility may be constructed on real property that is owned by the state of Montana, a local governmental entity, or a corporation or that is jointly owned.

(6) The proceeds of long-range building program general obligation bonds authorized to be issued in accordance with Title 17, chapter 5, part 8, may be used, in whole or in part, to construct a regional correctional facility that may be owned and operated by a local governmental entity, whether or not the facility or any part of it is to be owned and operated by the state. If the proceeds of long-range building program general obligation bonds or other state revenue is to be used in whole or in part to construct a regional correctional facility that is to be owned and operated by a local governmental entity, the department of administration is not required to procure the design, engineering, or construction services for the facility. The contract may provide that the local governmental entity shall procure the services, but must also provide that the department of administration must be involved in the development and

approval of the plans and specifications for the facility prior to the time the facility is let to bid.

(7) The department shall use the proceeds of long-range building program bonds and other state revenue appropriated for regional correctional facilities to negotiate with local governmental entities, corporations, or private providers to obtain the greatest number of beds that is consistent with program objectives for the least cost to the state.

(8) An individual, corporation, partnership, association, or other private organization or entity may not construct a regional correctional facility in this state, if privately operated or privately owned and operated, unless authorized by the department.

(9) An individual, corporation, partnership, association, or other private organization or entity may not operate a regional correctional facility in this state unless licensed by the department. A license is nontransferable.

(10) A regional correctional facility may house persons who are charged or convicted in this state, another state, or federal court in the detention center portion of a regional correctional facility. A person charged or convicted in another state or charged or convicted in federal court in another state may not be confined in a state correctional facility portion of a regional correctional facility in this state unless the confinement is under and governed by Title 46, chapter 19, part 3 or 4, and the department authorizes the placement of the person in the state correctional facility portion of the regional correctional facility.

History: En. Sec. 4, Ch. 316, L. 1995; amd. Sec. 2, Ch. 224, L. 1997; amd. Sec. 19, Ch. 491, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 491 inserted (8) and (9) regarding construction and operation of regional correctional facility; and in (10) inserted first sentence regarding regional correctional facility and in second sentence near beginning inserted "charged or", inserted "or charged or convicted in federal court in another state", substituted "a state correctional facility portion" for "the state portion", and near end after "part 3 or 4" inserted phrase regarding authorization of placement in regional correctional facility. Amendment effective April 27, 1999.

Cross-References

Acquisition, transfer, and management of property and buildings, Title 7, ch. 8.

Public construction contracts, Title 18, ch. 2.

53-30-505. Contract time limit. A contract entered into under 53-30-504 may not exceed a term of 30 years and must contain provisions for renegotiation after 30 years. The provisions of 18-4-313 that limit the term of a contract do not apply to a contract authorized by 53-30-504.

History: En. Sec. 5, Ch. 316, L. 1995; amd. Sec. 6, Ch. 455, L. 1997.

53-30-506. Local governmental entity option to purchase facility owned by state. If, under a contract entered into under 53-30-504, the state constructs and owns a regional correctional facility, the contract may provide an option for the local governmental entity or corporation to purchase the facility.

History: En. Sec. 6, Ch. 316, L. 1995; amd. Sec. 3, Ch. 224, L. 1997.

53-30-507. Rulemaking authority. The department may adopt rules to implement this part, including rules for the determination of how sites are to be chosen for regional correctional facilities. The rules must provide that in selecting a site, the department shall consider the need for a regional correctional facility in the area, the ability and willingness of a local governmental entity or a corporation to enter into a long-term contract with the department, and the availability of rehabilitative services to inmates. The rules must require that a corporation respond to a request for proposals prepared by the department for a regional correctional facility before a contract may be entered with that corporation. The department shall adopt rules that include the minimum applicable standards for the construction, operation, and physical condition of a state correctional facility portion of a regional correctional facility and for the security, safety, health, treatment, and discipline of persons confined in a state correctional facility portion of a regional correctional facility. The rules must require that a privately operated or privately owned and operated state correctional facility portion of a regional correctional facility conform to applicable American correctional association and national commission on correctional health care standards.

History: En. Sec. 7, Ch. 316, L. 1995; amd. Sec. 4, Ch. 224, L. 1997; amd. Sec. 20, Ch. 491, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 491 inserted fourth and fifth sentences regarding adoption of minimum standards. Amendment effective April 27, 1999.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-30-508 through 53-30-510 reserved.

53-30-511. Local governmental entity authorized to enter into long-term contracts and to incur indebtedness — noncompetition clause. (1) A local governmental entity may enter into a long-term lease or agreement, not to exceed a term of 30 years, with a corporation proposing to operate a regional detention facility under this part. The local governmental entity may agree in the long-term lease or agreement to acquire the facility from the corporation through a lease or a lease option to purchase, subject to the limitations of Title 7, chapter 7, part 21.

(2) A contract may also contain a covenant by the local governmental entity that if the contract is terminated for nonappropriation of funds by the local governmental entity, the local governmental entity agrees not to purchase, lease, or rent property to perform the functions performed by the corporation and agrees not to permit the functions to be performed by its own employees or by any local governmental entity for a specified period of not less than 1 year and not more than the remaining original term of the contract.

History: En. Sec. 5, Ch. 224, L. 1997.

Part 6

Private Correctional Facilities

53-30-601. Policy. It is the policy of the state of Montana to encourage innovative methods to provide the correctional resources necessary to confine persons convicted of crimes. The state recognizes that there may be benefits to confining convicted persons in private correctional facilities operated consistently with public policy.

History: En. Sec. 1, Ch. 511, L. 1997.

53-30-602. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) (a) "Private correctional facility" means a correctional facility that is either privately operated or privately owned and operated.

(b) The term does not include a private detention center or a regional jail governed by Title 7, chapter 32, part 22.

History: En. Sec. 2, Ch. 511, L. 1997; amd. Sec. 21, Ch. 491, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 491 in definition of private correctional facility deleted former second sentence that read: "The term includes a regional correctional facility, as defined in 53-30-503, if privately operated or privately owned and operated." Amendment effective April 27, 1999.

53-30-603. Private correctional facilities — confinable persons. (1) An individual, corporation, partnership, association, or other private organization or entity may not construct a private correctional facility in this state unless authorized by the department.

(2) An individual, corporation, partnership, association, or other private organization or entity may not operate a private correctional facility in this state unless licensed by the department. A license is nontransferable.

(3) A person charged or convicted in another state or charged or convicted in federal court in another state may not be confined in a private correctional facility in this state.

History: En. Sec. 3, Ch. 511, L. 1997; amd. Sec. 22, Ch. 491, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 491 in (1) after "may not construct" deleted "or operate", inserted "in this state", and substituted "authorized" for "licensed" and deleted second sentence that read: "A license is nontransferable"; inserted (2) regarding operation of a private correctional facility; in (3) near beginning inserted "charged or", inserted "or charged or convicted in federal court in another state", after "may not be confined in" deleted "the portion of", and after "in this state" deleted "that is used for the incarceration of convicted felons for a term of over 1 year unless the confinement is under and governed by Title 46, chapter 19, part 3 or 4"; and made minor changes in style. Amendment effective April 27, 1999.

Retroactive Applicability: Section 26, Ch. 491, L. 1999, provided: "The amendments to 53-30-603 apply retroactively, within the meaning of 1-2-109, to all occurrences on or after July 1, 1998."

53-30-604. Department duties and responsibilities — rulemaking authority. (1) (a) The department shall adopt administrative rules that include the minimum applicable standards for the siting, construction, operation, and physical condition of a private correctional facility and for the security, safety, health, treatment, and discipline of persons confined in a private correctional facility.

(b) The administrative rules must require that a private correctional facility conform to applicable American correctional association and national commission on correctional health care standards for the facility and achieve accreditation from the American correctional association and national commission on correctional health care within 3 years from the date the facility begins operation.

(c) The administrative rules must provide for review and approval of facility design and construction by the department of administration.

(2) Within 90 days of May 2, 1997, and on a biennial basis, the department shall publish a description of the long-range correctional needs, objectives, and goals of the department and the state.

(3) The department shall at least annually inspect each private correctional facility to determine compliance with this part, applicable American correctional association and national commission on correctional health care standards, department rules, and contract requirements.

(4) The department shall present a biennial report of compliance inspections to the legislature.

History: En. Sec. 4, Ch. 511, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-30-605. Requirements of request for proposals. (1) Prior to contracting for services with a private correctional facility, the department shall publish a request for proposals. The request for proposals must include a description of the long-range correctional needs, objectives, and goals of the department and the state.

(2) The request for proposals must include and identify the services requested and required and other information, including but not limited to:

(a) the physical plant, facility, and perimeter, including:

(i) the facility capacity and inmate population, including classification levels accepted;

(ii) inmate housing; and

(iii) security, safety, and emergency procedures;

(b) who is responsible for transportation of inmates:

(i) among facilities;

(ii) upon an inmate's release, including discharge or parole;

(iii) for court and administrative proceedings such as parole hearings and inmate participation as a witness;

(iv) for medical transportation; and

(v) for security;

(c) administration of the facility, including but not limited to:

(i) the organizational structure and staffing; and

(ii) a policy and procedures manual addressing:

(A) inmate discipline;

(B) incident reporting;

(C) grievance procedures;

(D) searches;

(E) drug testing;

(F) monitoring of facility standards; and

(G) the retention and maintenance of inmate and facility records by the private correctional facility;

(d) staffing issues regarding:

(i) management;

(ii) security;

(iii) administrative personnel;

(iv) qualifications and requirements;

(v) training; and

(vi) staff-to-inmate ratios;

(e) inmate needs such as food, clothing, sanitation, hygiene, and laundry;

(f) programs and services to be required such as vocational and educational training, religious services or customs, counseling, recreation, and canteen;

(g) medical, dental, optical, pharmaceutical, psychological, and other medical-related care;

(h) insurance requirements;

(i) indemnification;

(j) a performance bond that is sufficient to protect the state from damages upon default or nonperformance and that may not exceed the biennial amount of the compensation to be paid to the contractor;

(k) a requirement that proposers provide evidence or documentation demonstrating an ability to provide the services, to comply with acceptable services, and to comply with the rules, regulations, and contract requirements;

(l) a requirement that proposers provide documentation of financial stability or security; and

(m) monitoring of facility operations.

(3) The department may release separate requests for proposals or contracts for specific services such as transportation of inmates and medical, dental, vision, and sick call services. Each contract must include a detailed explanation of the services that must be provided.

(4) The department shall maintain a list of qualified applicants and all proposal responses. The department shall retain all records related to the evaluation process and the awarding of a contract.

History: En. Sec. 5, Ch. 511, L. 1997.

53-30-606. License — inspection. (1) The department shall grant a license to a private correctional facility determined by the department to conform to this part and department rules.

(2) The department may grant a temporary license for 1 year to a facility that loses accreditation if the department determines that the facility is making satisfactory progress toward substantial conformity with this part, applicable American correctional association and national commission on correctional health care standards, as determined by the department by administrative rule, department rules, and contract requirements and that the interests and well-being of the residents of the state and of the persons to be confined in the facility are protected. A temporary license may not be renewed.

(3) Except as provided in subsection (2), the department may not grant a license unless the contractor conforms to all state and federal statutes, applicable American correctional association and national commission on correctional health care standards, as determined by the department by administrative rule, department rules, and other requirements as defined in administrative rule. During the initial 3-year period of a contract, a private correctional facility is not required to be accredited by the American correctional association or the national commission on correctional health care in order to be granted a license by the department.

(4) The department may not grant a license to a private correctional facility unless the department determines that the facility conforms to the

long-range correctional needs, objectives, and goals of the department and state.

(5) The department may not grant a license to a private correctional facility until the owner or operator of the facility has provided the department with proof of indemnity insurance that appropriately indemnifies the state and that is acceptable to the department.

(6) The department may not grant a license to a private correctional facility unless the facility is constructed in accordance with American correctional association facility construction requirements. In addition, the private correctional facility shall comply with any other applicable local, state, or federal laws or regulations.

(7) The department may not grant a license to a private correctional facility unless the facility has promulgated a policy to provide reasonable access to the facility by representatives of the public media.

(8) The department may not grant a license to a private correctional facility unless the facility has entered into an agreement with local and state law enforcement authorities. The private correctional facility shall demonstrate an adequate response for the mutual aid, assistance, and notification in the event of an escape, riot or disturbance, natural or human-caused event, or other act that may potentially affect public safety.

(9) The department may not grant a license to a private correctional facility unless the legislature has appropriated funds for the housing of state inmates in private correctional facilities.

(10) The department shall at least annually inspect each private correctional facility to determine compliance with this part and department rules.

History: En. Sec. 6, Ch. 511, L. 1997.

53-30-607. Licensure limitations — siting of private correctional facilities. (1) The department may not grant a license to a private correctional facility located within 1 mile of a public or nonpublic school, not including a home school. However, if a public or nonpublic school is established after a facility has been approved, the department may not prevent the private correctional facility from operating because of this subsection (1).

(2) The department may not grant a license to a private correctional facility unless there has been a public hearing in the county in which the private correctional facility is to be located and unless the county commissioners approve the location of the private correctional facility by a majority vote. If the proposed facility is to be located within the limits of a municipality, the department may not grant a license to a private correctional facility unless there has been a public hearing in the municipality and the local governing body approves the location of the private correctional facility by a majority vote.

(3) If the siting of a private correctional facility is proposed within 7 ½ miles of an adjacent county or if the department determines that there are reasonable expectations that the siting may have a significant impact on an adjacent county, the department may not grant a license to a private correctional facility unless there has been a public hearing in the adjacent county and unless the concerns of the adjacent county have been considered.

History: En. Sec. 7, Ch. 511, L. 1997.

53-30-608. Contracts with owners or operators of private correctional facilities. (1) Upon request of the legislative audit committee, the legislative audit division shall review the procedures by which a contract was awarded and shall review each contract prior to execution to determine if the contract includes the requirements provided in this part.

(2) A contract with an owner or operator of a private correctional facility must be awarded to the contractor who best meets the needs of the state and the department and demonstrates the capability of providing services requested.

(3) A contract must specify the type and level of services to be provided by the contractor. The contract must provide that a private contractor may not:

(a) choose the correctional facility to which an inmate is initially or subsequently assigned. A contractor may request the department to transfer an inmate to a state facility or to another private correctional facility.

(b) develop or adopt disciplinary rules that differ from the disciplinary rules, penalties, and policies of the department;

(c) make a decision that affects the sentence imposed on an inmate or the time served by an inmate;

(d) make recommendations to the board of pardons and parole with respect to the denial or granting of parole or release, except to submit reports to the board of pardons and parole and to respond to requests by the department or the board of pardons and parole;

(e) develop or implement requirements that inmates engage in any type of work, except to the extent that those requirements are accepted by the department;

(f) determine inmate eligibility for any form of release from a correctional facility; or

(g) use an inmate classification system unless it is approved by the department.

(4) Contracts may not exceed a term of 30 years and must contain provisions for renegotiation after 30 years. The provisions of 18-4-313 that limit the term of a contract do not apply to a contract authorized by this section.

(5) The contract must specify that the private correctional facility shall grant access to the legislative audit division or a person contracting with the legislative audit division for compliance auditing. The contractor shall provide access to all areas of the facility and to all records maintained onsite or offsite that pertain to all aspects of the facility, including but not limited to operation, financial, and inmate records.

History: En. Sec. 8, Ch. 511, L. 1997.

53-30-609. Contractor costs responsibility. (1) The contractor is responsible for costs incurred by the state or any political subdivision of the state for legal costs relating to escapes, riots or disturbances, or other natural or human-caused events that occur at the facility because of the contractor's negligence, errors, omissions, intentional acts, or failure to comply with the terms of the contract.

(2) The contractor is responsible for all reasonable costs and expenses incurred by the state or a political subdivision of the state for defense of causes

of action brought by or on behalf of an inmate that accrue while an inmate is incarcerated at a private correctional facility.

(3) The provisions of this part are not intended to create a private or public cause of action for any person, partnership, corporation, or other entity, including any inmate housed within any private correctional facility or any inmate housed within the state of Montana.

History: **En. Sec. 9, Ch. 511, L. 1997.**

53-30-610. Restrictions on inmate movements. An inmate may not leave the secure premises of a private correctional facility except to comply with a court order, to receive medical care that is not available at the private correctional facility, or as part of a work program without the express written approval of the department. Any movement of an inmate outside of the secure premises of the private correctional facility must be in compliance with approved policies and procedures established by the department.

History: **En. Sec. 10, Ch. 511, L. 1997.**

53-30-611. Failure to comply with law — action by department. (1) A contractor shall remain in strict compliance with this part, established applicable American correctional association and national commission on correctional health care standards, as determined by the department by administrative rule, department rules, and contract requirements.

(2) If the department determines at any time that a private correctional facility does not conform to this part, applicable American correctional association and national commission on correctional health care standards, department rules, and contract requirements, the department shall notify the chief executive officer and the owner or operator, or both, of the private correctional facility. The notice must state the deficiencies and order that they be remedied within a specified period of time not to exceed 1 year. If the deficiencies are not remedied within that time, the department may hold a contested case hearing under Title 2, chapter 4, and if the department finds that suspension or revocation is warranted by nonconformance with this part, applicable American correctional association and national commission on correctional health care standards, department rules, and contract requirements, the department may suspend or revoke the facility's license.

(3) If a private correctional facility fails to comply with this part, applicable American correctional association and national commission on correctional health care standards, department rules, or contract requirements within the specified time period, the state may assume control of the facility for the purpose of protecting the inmates, facility staff, or the public. If the state assumes control of the facility, the department shall suspend payment for any services, and the department assumes the costs of assuming control.

(4) The department may assume emergency control of a private correctional facility if substantial violations exist that affect the life, health, or safety of the inmates, facility employees, or the public or that otherwise substantially impact the security of the private correctional facility.

(5) In the event that a contractor fails to comply with this part, applicable American correctional association and national commission on correctional health care standards, department rules, or contract requirements, the state may retain the option of purchasing or leasing the facility.

(6) If either the state or the contractor fails to renew a contract, the state may retain the option of purchasing or leasing the facility.

(7) If the state retains the option of purchasing or leasing the facility under subsections (5) and (6) of this section, because it requires the creation of state debt, the appropriation bill that funds the purchase of services from the facility must be treated in the same manner as a bill creating state debt and requires a vote of two-thirds of the members of each house of the legislature for passage.

History: En. Sec. 11, Ch. 511, L. 1997.

TITLES 54 THROUGH 59

RESERVED

TITLE 60

HIGHWAYS AND TRANSPORTATION

Ch.

1. Highway Code.
2. State Administration.
3. Distribution and Apportionment of Highway Funds.
4. Acquisition and Disposition of Property.
5. Control of Access and Information Signs.
6. Highway Encroachments.
7. Livestock on Highways.
Chapters 8 through 10 reserved.
11. Rail Transportation.
Chapters 12 through 20 reserved.
21. Public Transportation.

CHAPTER 1

HIGHWAY CODE

Part 1 — General Provisions

60-1-101. Legislative findings.
60-1-102. Legislative policy and intent.
60-1-103. General definitions.
60-1-104. Good Roads Day.

Part 2 — Classification of Highways

60-1-201. Classification — highways and roads.
60-1-202. Lewis and Clark highway.
60-1-203. Veterans memorial highway.
60-1-204. Maureen and Mike Mansfield heritage route.
60-1-205. Charles M. Russell trail.
60-1-206. Donald J. Ruhl medal of honor highway.
60-1-207. Old forts trail.
60-1-208. Montana highway 3.

Chapter Cross-References

Local government — transportation, Title 7, ch. 14.

General obligation highway bonds, Title 17, ch. 5, part 5.

Traffic education, Title 20, ch. 7, part 5.

Conditional granting of use of highways to nonresidents, 25-3-601.

Highway patrol, Title 44, ch. 1.

Motor Vehicles, Title 61.

Traffic regulation, Title 61, ch. 8.

Motor carriers — regulation, Title 69, ch. 12.

Railroad highway crossing, Title 69, ch. 14, part 6.

Hunting rights on adjoining federal wildlife preserve — distance from highways, 87-1-227.

Coal impacts — evaluation and abatement funding, Title 90, ch. 6, part 2.

Part 1

General Provisions

Part Cross-References

Roadblocks, Title 46, ch. 5, part 5.

Highway safety, Title 61, ch. 2.

60-1-101. Legislative findings. The legislature recognizes that safe and efficient highway transportation is of important interest to all of the people of the state and declares that:

(1) inadequate highways, roads, and streets obstruct the free flow of traffic, increase costs of motor vehicle operation, endanger the health and safety of the citizens of the state, depreciate property values, and impede generally the economic progress of the state;

(2) the problems of establishing and maintaining adequate highways, roads, and streets, eliminating congestion, reducing accident frequency, providing parking facilities, and taking all necessary steps to insure safe and convenient transportation are urgent;

(3) adequate and integrated systems of highways, roads, and streets are essential to the general welfare of the state;

(4) providing adequate highway facilities is a proper public use and purpose, and this title is necessary for the preservation of the public peace, health, and safety, for the promotion of the general welfare, and as a contribution to the national defense.

History: En. Sec. 1, Ch. 197, L. 1965; R.C.M. 1947, 32-2201; amd. Sec. 1, Ch. 23, L. 1979.

60-1-102. Legislative policy and intent. Consistent with the foregoing determinations and declarations, the legislature intends:

(1) to place a high degree of trust in the hands of those officials whose duty it is, within the limits of available funds, to plan, develop, operate, maintain, and protect the highway facilities of this state for present as well as for future use;

(2) to make the department of transportation custodian of the federal-aid and state highways and to impose similar responsibilities upon the boards of county commissioners with respect to county roads and upon municipal officials with respect to the streets under their jurisdiction;

(3) that the state shall have integrated systems of highways, roads, and streets and that the department of transportation, the counties, and municipalities assist and cooperate with each other to that end;

(4) to provide sufficiently broad authority to enable the highway officials at all levels of government to function adequately and efficiently in all areas of their respective responsibilities, subject to the limitations of the constitution and the legislative mandate hereinafter imposed.

History: En. Sec. 2, Ch. 197, L. 1965; amd. Sec. 68, Ch. 316, L. 1974; R.C.M. 1947, 32-2202; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Municipal contracts and franchises, Title 7, ch. 5, part 43.

General provisions related to county roads, Title 7, ch. 14, part 21.

Highway patrol, Title 44, ch. 1.

Authority of Department of Transportation, 61-3-713.

Planning of roads and streets by planning boards, 76-1-106.

Master plan — planning board, 76-1-601.

Exemption from surveying and platting requirements for lands acquired for state highways, 76-3-209.

60-1-103. General definitions. Subject to additional definitions contained in this title that are applicable to specific chapters or sections and unless the context otherwise requires, the following definitions apply:

(1) "Abandonment" means cessation of use of right-of-way or an easement or cessation of activity on the right-of-way or easement with no intention to reclaim or use again. Abandonment is sometimes called vacation.

(2) "Bridge" means any bridge constructed by the department, together with all appurtenances, additions, alterations, improvements, and replacements and the approaches to the bridge, lands used in connection with the bridge, and improvements incidental or integral to the bridge.

(3) "Commission" means the transportation commission provided for in 2-15-2502.

(4) "Condemnation" means taking by exercise of the right of eminent domain.

(5) "Construction" means supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, mapping, and costs of right-of-way or other interests in land and elimination of hazards at railway grade crossings.

(6) "Control of access" means the condition in which the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with a highway is fully or partially controlled by public authority.

(7) "County road" means any public highway opened, established, constructed, maintained, abandoned, or discontinued by a county in accordance with Title 7, chapter 14.

(8) "Department" means the department of transportation provided for in Title 2, chapter 15, part 25.

(9) "Director" means the director of transportation, a position provided for in 2-15-2501.

(10) "Easement" means a right acquired by public authority to use or control property for a designated purpose.

(11) "Eminent domain" means the right of the state to take private property for public use.

(12) "Federal-aid highway" means a public highway that is a portion of any of the federal-aid highway systems.

(13) "Federal-aid highway systems" means all of the systems named as part of the systems and their urban extensions.

(14) "Federal-aid interstate system" means that system of public highways selected by the commission in cooperation with adjoining states, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

(15) "Federal-aid primary system" means that system of connected public highways designated by the commission, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

(16) "Federal-aid secondary system" means that system of public highways not in the federal-aid primary or interstate systems selected by the commission in cooperation with the boards of county commissioners, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

(17) "Fee simple" means an absolute estate or ownership in property, including unlimited power of alienation.

(18) "Highway" includes rights-of-way or other interests in land, embankments, retaining walls, culverts, sluices, drainage structures, bridges, railroad-highway crossings, tunnels, signs, guardrails, and protective structures.

(19) "Highway", "road", and "street", whether the terms appear together or separately or are preceded by the adjective "public", are general terms denoting a public way for purposes of vehicular travel and include the entire area within the right-of-way.

(20) "Highway authority" means the entity at any level of government authorized by law to construct and maintain highways.

(21) "Maintenance" means the preservation of the entire highway, including surface, shoulders, roadsides, structures, and traffic-control devices that are necessary for the safe and efficient use of the highway.

(22) "Public highways" means all streets, roads, highways, bridges, and related structures:

(a) built and maintained with appropriated funds of the United States or the state or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain; or

(d) acquired by adverse use by the public, jurisdiction having been assumed by the state or any political subdivision of the state.

(23) "Right-of-way" is a general term denoting land, property, or any interest in land or property, usually in a strip, acquired for or devoted to highway purposes.

(24) "Scenic-historic byway" means a public road or segment of a public road that has been designated as a scenic-historic byway by the commission, as provided in 60-2-601.

(25) "State highway" means any public highway planned, laid out, altered, constructed, reconstructed, improved, repaired, maintained, or abandoned by the department.

History: En. Sec. 2-101, Ch. 197, L. 1965; amd. Sec. 69, Ch. 316, L. 1974; R.C.M. 1947, 32-2203(part); amd. Sec. 2, Ch. 23, L. 1979; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 2, Ch. 75, L. 1995; amd. Sec. 1, Ch. 546, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 546 inserted definition of scenic-historic byway; and made minor changes in style. Amendment effective July 1, 1999.

Cross-References

Powers and duties of Governor, 2-15-201.

60-1-104. Good Roads Day. The third Tuesday in June is hereby designated "Good Roads Day". The governor may annually by public proclamation request the people of the state to contribute toward the improvement and safety of public highways.

History: En. Sec. 11-101, Ch. 197, L. 1965; R.C.M. 1947, 32-4401.

Part 2

Classification of Highways

Part Cross-References

Cession and retrocession of jurisdiction over Blackfeet highway, 2-1-206.

60-1-201. Classification — highways and roads. (1) Public highways of this state are classified as follows:

(a) federal-aid highways;

(b) state highways;

(c) county roads;

(d) city streets.

(2) All highways that are not designated, selected, or established by the commission or constructed or maintained by the department may be designated as county roads or city streets upon the acceptance of the county or city.

(3) County roads are those opened, established, constructed, maintained, changed, abandoned, or discontinued by a county in accordance with Title 7, chapter 14.

(4) City streets are those public highways under the jurisdiction of municipal officials.

History: En. Sec. 3-101, Ch. 197, L. 1965; amd. Sec. 70, Ch. 316, L. 1974; R.C.M. 1947, 32-2301; amd. Sec. 3, Ch. 23, L. 1979; amd. Sec. 4, Ch. 440, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 440 at end of (2) substituted "may be designated as county roads or city streets upon the acceptance of the county or city" for "are county roads or city streets"; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

General provisions related to county roads, Title 7, ch. 14, part 21.

General provisions related to municipal trafficways and public grounds, Title 7, ch. 14, part 41.

Roads, Title 61, ch. 1, part 2.

60-1-202. Lewis and Clark highway. There is hereby established the Lewis and Clark highway. It shall be composed of the following existing routes:

(1) from the Idaho state line west of Lolo Hot Springs, Montana, to the junction with U.S. highway 93 at Lolo;

(2) thence north from Lolo on U.S. highway 93 to Missoula;

(3) thence east from Missoula on U.S. highways 12 and 10 to Garrison;

(4) thence east from Garrison on U.S. highway 12 through Forsyth and Baker to the North Dakota state line.

History: En. Sec. 3-102, Ch. 197, L. 1965; R.C.M. 1947, 32-2302.

60-1-203. Veterans memorial highway. There is established the veterans memorial highway composed of the existing U.S. interstate highway 15 from the Montana-Idaho border at Monida Pass to the international boundary at Sweetgrass.

History: En. Sec. 1, Ch. 319, L. 1987.

60-1-204. Maureen and Mike Mansfield heritage route. The portion of U.S. interstate highway 15 between Butte and Great Falls is established as the Maureen and Mike Mansfield heritage route.

History: En. Sec. 1, Ch. 643, L. 1989.

60-1-205. Charles M. Russell trail. The portion of U.S. highway 87, state highway 200, between Great Falls and Lewistown and continuing to Jordan and the portion of state secondary road 543, connecting U.S. highway 87, state highway 200, to the Charles M. Russell National Wildlife Refuge, are established as the Charles M. Russell trail.

History: En. Sec. 1, Ch. 412, L. 1993.

60-1-206. Donald J. Ruhl medal of honor highway. The portion of Montana state highway 78, from Columbus through Absarokee and Roscoe to Red Lodge, is established as the Donald J. Ruhl medal of honor highway.

History: En. Sec. 1, Ch. 67, L. 1995.

60-1-207. Old forts trail. Beginning at the Old Fort park in Fort Benton, proceeding west via 20th street to Saint Charles street, along Saint Charles street to state highway 387, along state highway 387 to U.S. highway 87 to Havre, continuing along state highway 233 and into Canada on Saskatchewan 21, the Old Forts Trail is established.

History: En. Sec. 1, Ch. 321, L. 1997.

60-1-208. Montana highway 3. (1) The portion of Montana highway 3 and U.S. highway 12 from Billings to Harlowton via Lavina, proceeding north on U.S. highway 191 to U.S. highway 87, northwest along U.S. highway 87 to Montana highway 200, continuing along Montana highway 200 through the intersection with U.S. highway 89, and along U.S. highway 87/89 to Great Falls is designated as Montana highway 3.

(2) The department shall erect and maintain signs designating Montana highway 3 along the route established in subsection (1) and shall accomplish the signing changes required in this section in accordance with the department's normal sign maintenance and replacement schedule.

History: En. Sec. 1, Ch. 342, L. 1997.

CHAPTER 2

STATE ADMINISTRATION

Part 1 — Transportation Commission

60-2-101. Repealed.
60-2-102. Repealed.
60-2-103. Repealed.
60-2-104. Repealed.
60-2-105. Repealed.
60-2-106. Designation of highways not located entirely within the state.
60-2-107. Abandonment of highways — exchange of roadways — public notice required.
60-2-108 and 60-2-109 reserved.
60-2-110. Setting priorities and selecting projects.
60-2-111. Letting of contracts on state and federal-aid highways.
60-2-112. Competitive bidding — reciprocity.
60-2-113. Bidder's security — contractor's bond.
60-2-114. Bids for contracts let by commission to contain security, unit price, and signature.
60-2-115. Contract let by commission — time for final payment of contract price — interest.
60-2-116 through 60-2-120 reserved.
60-2-121. Authority of commission to prioritize expenditures on railroad crossings — public hearing.
60-2-122 through 60-2-124 reserved.
60-2-125. Definitions.
60-2-126. Designation of public highways — allocation of funds.
60-2-127. Allocation of funds for projects.
60-2-128. Maintenance system — designation of highways.
60-2-129. Allocation of funds.

Part 2 — Department of Transportation General Powers and Duties

60-2-201. General powers of department.
60-2-202. Duties of department.
60-2-203. Maintenance responsibility.
60-2-204. Maintenance agreements with local governments.
60-2-205. Powers of department with respect to highways not located entirely within the state.
60-2-206. Compilation of statistics — investigation — consultation.
60-2-207. Agreements concerning analysis of effects of weight on highways.

60-2-208. Seeding along highways.
60-2-209. Description and plan of new highway or reconstructed or controlled-access facility.
60-2-210. Payment of construction and maintenance costs within municipalities.
60-2-211. Bypassing of municipalities — consent of municipal governing body.
60-2-212 reserved.
60-2-213. Interstate emergency maintenance service agreements.
60-2-214 and 60-2-215 reserved.
60-2-216. Repealed.
60-2-217. Signs identifying mountain ranges — scenic loop highways — costs — responsibility of department.
60-2-218. Welcome and farewell signs — design, erection, maintenance — completion date — exceptions.
60-2-219. Department authorized to accept and expend funds for welcome and farewell signs.
60-2-220. Butte-Anaconda cultural heritage area — signs — location and design — funding.
60-2-221. Renumbered 60-2-241 by Code Commissioner, 1989.
60-2-222. Terminated.
60-2-223. Terminated.
60-2-224. Repealed.
60-2-225 through 60-2-240 reserved.
60-2-241. Prohibited materials.
60-2-242. Markers — commemorative highways.
60-2-243. Visitor information centers — signs.

Part 3 — Ports of Entry, Checking Stations, and Interstate Cooperation

60-2-301. Ports of entry and checking stations authorized.
60-2-302. Repealed.
60-2-303. Cooperation in use of ports of entry and checking stations.
60-2-304 through 60-2-310 reserved.
60-2-311. Interstate agreements for tax and fee collection and port operation.

Parts 4 and 5 reserved

Part 6 — Scenic-Historic Byways Program

60-2-601. Scenic-historic byways program — advisory council — expenditure of funds.
60-2-602. Scenic-historic byways program — rules.

Chapter Cross-References

General obligation highway bonds, Title 17, ch. 5, part 5.

Highway revenue bonds, Title 17, ch. 5, part 9.

Highway patrol officers' retirement, Title 19, ch. 6.

Conditional granting of use of highways to nonresidents, 25-3-601.

No road construction through cemetery, 35-20-217.

Highway patrol, Title 44, ch. 1.

Part 1
Transportation Commission

Part Cross-References

Department of Transportation, Title 2, ch. 15, part 25.

Transportation Commission — membership and districts, 2-15-2502.

Public contractor's fees and tax, Title 15, ch. 50.

Establishment of special speed limits, 61-8-309, 61-8-310, 61-8-313.

60-2-101. Repealed. Sec. 1, Ch. 247, L. 1985.

History: En. Sec. 4-104, Ch. 197, L. 1965; amd. Sec. 73, Ch. 316, L. 1974; R.C.M. 1947, 32-2404(2).

60-2-102. Repealed. Sec. 1, Ch. 234, L. 1989.

History: En. Sec. 4-104, Ch. 197, L. 1965; amd. Sec. 73, Ch. 316, L. 1974; R.C.M. 1947, 32-2404(1).

60-2-103. Repealed. Sec. 19, Ch. 87, L. 1993.

History: En. Sec. 4-109, Ch. 197, L. 1965; amd. Sec. 11, Ch. 93, L. 1969; amd. Sec. 77, Ch. 316, L. 1974; R.C.M. 1947, 32-2409(1).

60-2-104. Repealed. Sec. 19, Ch. 87, L. 1993.

History: En. Sec. 4-107, Ch. 197, L. 1965; amd. Sec. 1, Ch. 201, L. 1967; amd. Sec. 75, Ch. 316, L. 1974; R.C.M. 1947, 32-2407(part).

60-2-105. Repealed. Sec. 19, Ch. 87, L. 1993.

History: En. 32-2407.1 by Sec. 1, Ch. 390, L. 1977; R.C.M. 1947, 32-2407.1.

60-2-106. Designation of highways not located entirely within the state. The commission may designate highways subject to improvement under the provisions of Title 23, U.S.C., even though those highways are not located entirely and continuously within the boundaries of the state. The designations shall meet the following conditions:

(1) the highway is on an approved federal-aid route and eligible for improvement under Title 23, U.S.C.;

(2) the location of a portion of the route outside the boundaries of the state is necessary because of natural geographical or physical conditions which make the construction of the highway within the state impossible or impracticable;

(3) the portion of the route located outside the state does not connect with and is not a part of the state highway system of the adjoining state.

History: En. Sec. 4-108, Ch. 197, L. 1965; amd. Sec. 76, Ch. 316, L. 1974; R.C.M. 1947, 32-2408(1); amd. Sec. 4, Ch. 23, L. 1979.

Cross-References

Cession and retrocession of jurisdiction over Blackfeet highway, 2-1-206.

60-2-107. Abandonment of highways — exchange of roadways — public notice required. (1) The commission may abandon highways on the federal-aid systems and state highways.

(2) Before abandoning or discontinuing maintenance on a highway, the commission shall hold a public hearing in the county or counties affected by the abandonment. The commission may elect to offer to transfer the liability for and the maintenance of a highway to another agency or agencies that may in turn elect to take responsibility for the highway. The commission shall notify the board of county commissioners in writing of its intent to abandon a highway and hold a public hearing. The commission shall publish for 3 consecutive weeks in local newspapers within the county the notice of abandonment and public hearing.

(3) The commission may enter into an agreement with a unit of local government, on mutually beneficial terms, to exchange property interests or responsibilities, including maintenance, on any portion of a federal-aid or state highway and on any portion of a county road or city street.

(4) The commission may not abandon a highway, road, or right-of-way used to access public land unless another highway, road, or right-of-way provides substantially the same access.

(5) The commission may not abandon a highway, road, or right-of-way used to access private land if the access benefits two or more landowners unless all the landowners agree to the abandonment.

History: En. Sec. 4-106, Ch. 197, L. 1965; amd. Sec. 74, Ch. 316, L. 1974; amd. Sec. 1, Ch. 283, L. 1977; R.C.M. 1947, 32-2406(part); amd. Sec. 1, Ch. 178, L. 1997; amd. Sec. 4, Ch. 107, L. 1999; amd. Sec. 5, Ch. 440, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 107 inserted (4) prohibiting commission from abandoning highway, road, or right-of-way accessing public land unless another highway, road, or right-of-way provides substantially same access; and inserted (5) prohibiting commission from abandoning highway, road, or right-of-way accessing private land benefitting two or more landowners unless all agree. Amendment effective March 18, 1999.

Chapter 440 inserted (2) concerning procedure for abandoning or discontinuing maintenance on a highway; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Costs of discontinuation of trafficway, 7-14-104.

Abandonment or vacation of county roads, 7-14-2615.

Abandonment or vacation of federal-aid or state highways, 60-4-208.

60-2-108 and 60-2-109 reserved.

60-2-110. Setting priorities and selecting projects. (1) The commission shall establish priorities and select and designate segments for construction and reconstruction on the national highway system, the primary highway system, the secondary highway system, the urban highway system, and state highways.

(2) The commission shall consult with the board of county commissioners of the county in which a highway is located when establishing priorities and when selecting and designating segments on the secondary highway system for construction and reconstruction.

(3) The commission shall consult with the appropriate local government authorities when establishing priorities and selecting and designating segments on the urban highway system for construction and reconstruction.

(4) The commission shall use information gathered or discovered by and documents prepared by the department, and department officials and employees shall provide assistance and advice.

(5) The commission shall establish and determine priorities and projects for rail and transit programs and, to the extent possible, coordinate intermodal transportation within the state.

(6) In carrying out the requirements of this section, the department shall:

(a) make recommendations to the commission;

(b) establish the requirements and procedures for administering this section; and

(c) take all reasonable steps to ensure the integrity and viability of agricultural and rural transportation and related needs.

History: En. Sec. 1, Ch. 30, L. 1983; amd. Sec. 8, Ch. 87, L. 1993; amd. Sec. 3, Ch. 75, L. 1995.

Cross-References

General powers of Department of Transportation, 60-2-201.

60-2-111. Letting of contracts on state and federal-aid highways. (1) Except as provided in subsection (2), all contracts for the construction or reconstruction of the highways and streets located on highway systems and state highways as defined in 60-2-125, including portions in cities and towns, and all contracts entered into under 7-14-4108 must be let by the commission. Except as otherwise specifically provided, the commission may enter the types of contracts and upon terms as it may decide. All contracts must meet the requirements of Title 18, chapter 2, part 4. When there is no prevailing rate of wages set by collective bargaining, the commission shall determine the prevailing rate to be stated in the contract.

(2) The commission may delegate the authority, with all applicable statutory restrictions, to award any contract covered by this section to the department or to a unit of local government.

History: En. Sec. 9-101, Ch. 197, L. 1965; R.C.M. 1947, 32-4101; amd. Sec. 1, Ch. 88, L. 1983; amd. Sec. 9, Ch. 87, L. 1993.

Cross-References

County contracts, Title 7, ch. 5, part 23.

Public contracts generally, Title 18, ch. 1.

Construction contracts, Title 18, ch. 2.

Standard prevailing rate of wages, 18-2-402.

Contracts generally, Title 28, ch. 2, 3.

Nondiscrimination provision in all public contracts, 49-3-207.

60-2-112. Competitive bidding — reciprocity. (1) Except as provided in subsections (2) through (5), when the estimated cost of any work exceeds $50,000, the commission shall let the contract by competitive bidding to the lowest responsible and responsive bidder. Award must be made upon the notice and terms that the commission prescribes by its rules. However, except when prohibited by federal law, the commission shall make awards and contracts in accordance with 18-1-102 and 18-1-112.

(2) The commission may let a contract by means other than competitive bidding if it determines that special circumstances so require. The commission shall specify the special circumstances in writing.

(3) The commission may enter into contracts with units of local government for the construction of projects without competitive bidding if it finds that the work can be accomplished at lower total costs, including total costs of labor, materials, supplies, equipment usage, engineering, supervision, clerical and accounting services, administrative costs, and reasonable estimates of other costs attributable to the project.

(4) The commission may delegate to the department the authority to enter, without competitive bidding, agreed-upon price contracts for projects costing $50,000 or less.

(5) The commission or the department may not enter into a contract for [a federal-aid highway project,] a state-funded highway project[,] or a construction project with a bidder whose operations are not headquartered in the United States unless:

(a) the foreign country in which the bidder is headquartered affords companies based in the United States open, fair, and nondiscriminatory access to bidding on highway projects and construction projects located in the foreign country; and

(b) the department has entered into a reciprocity agreement with the foreign country that addresses:

(i) the equal and fair treatment of bids originating in the United States and in the foreign country;

(ii) specific ownership requirements and tax policies in the United States and in the foreign country that may result in the unequal treatment of all bids received, regardless of their origin;

(iii) the means by which contractors from both the United States and the foreign country are notified of highway projects and construction projects available for bid; and

(iv) any other differences in public policy or procedure that may result in the unequal treatment of bids originating in the United States or in the foreign country for projects located in either the United States or the foreign country.

(6) For the purposes of subsection (5) "construction" has the same meaning as is provided in 18-2-101. *(Bracketed language void on occurrence of contingency—sec. 3, Ch. 306, L. 1999.)*

History: En. Sec. 9-102, Ch. 197, L. 1965; amd. Sec. l, Ch. 278, L. 1974; amd. Sec. 150, Ch. 316, L. 1974; R.C.M. 1947, 32-4102; amd. Sec. 5, Ch. 23, L. 1979; amd. Sec. 1, Ch. 598, L. 1983; amd. Sec. 2, Ch. 87, L. 1985; amd. Sec. 1, Ch. 286, L. 1995; amd. Sec. 20, Ch. 443, L. 1997; amd. Sec. 2, Ch. 306, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 306 inserted (5) prohibiting department of transportation and transportation commission from entering into contracts for highway construction projects with bidders not headquartered in United States unless reciprocity agreement in place; and inserted (6) defining construction. Amendment effective April 14, 1999.

Contingent Voidness: Section 3, Ch. 306, L. 1999, provided: "**Contingent voidness.** (1) If the federal government notifies the state in writing that the enforcement of [this act] places at risk this state's eligibility to receive federal funds for highway projects, then the bracketed language in [this act] is void pursuant to subsection (2).

(2) The bracketed language in [this act] is void on the date that the director of the department of transportation certifies to the governor in writing that the director has received written notice of the federal government's intention to terminate allocation of highway funds to Montana because of the enforcement of [this act]."

Cross-References

General powers of county relating to roads and bridges, 7-14-2101.

General powers of Department of Transportation, 60-2-201.

60-2-113. Bidder's security — contractor's bond. (1) Whenever the commission calls for competitive bidding, each bidder shall meet all requirements of Title 18, chapter 1, part 2.

(2) Every contractor awarded a contract by the commission shall meet all requirements set forth in Title 18, chapter 2, part 2. For the purposes of those sections with relation to contracts with the commission, a contract shall not be completed until the commission, while formally convened, affirmatively accepts all of the work thereunder.

History: En. Sec. 9-103, Ch. 197, L. 1965; R.C.M. 1947, 32-4103.

60-2-114. Bids for contracts let by commission to contain security, unit price, and signature. Each bid communicated to the commission in response to a request for bids required by this part must comply with the unit price and signature requirements of 18-2-303 and the bid security requirements of 60-2-113 in order for the bid to be accepted.

History: En. Sec. 3, Ch. 282, L. 1999.

Compiler's Comments

Effective Date: This section is effective October 1, 1999.

Applicability: Section 5, Ch. 282, L. 1999, provided: "[This act] applies to bids made in response to requests for bids made after October 1, 1999."

60-2-115. Contract let by commission — time for final payment of contract price — interest. The commission shall comply with the 30-day time period for payment of contracts as provided in 18-2-306 for all contracts let by the commission in accordance with this part.

History: En. Sec. 2, Ch. 439, L. 1999.

Compiler's Comments

Effective Date: This section is effective October 1, 1999.

Applicability: Section 3, Ch. 439, L. 1999, provided: "[This act] applies to contracts entered into after October 1, 1999."

60-2-116 through 60-2-120 reserved.

60-2-121. Authority of commission to prioritize expenditures on railroad crossings — public hearing. (1) The commission shall adopt rules to prioritize the expenditure of funds on railroad crossings.

(2) If requested by the board of county commissioners of any county, the commission shall conduct a public hearing in the affected county on the priority assigned any railroad crossing, and based on the evidence presented at the public hearing, the commission may revise the priority of the railroad crossing.

History: En. Sec. 1, Ch. 359, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Railroad highway crossings, Title 69, ch. 14, part 6.

60-2-122 through 60-2-124 reserved.

60-2-125. Definitions. As used in Title 60, chapter 2, part 1, and Title 60, chapter 3, part 2, unless otherwise provided, the following definitions apply:

(1) "Federal-aid highway funds" means those funds made available for expenditure by the department pursuant to Title 23, U.S.C.

(2) "National highway system" means the system of public highways designated by the commission and approved by the secretary of transportation as provided in Title 23, U.S.C.

(3) "Primary highway system" means the highways that have been functionally classified by the department as either principal or minor arterials and that have been selected by the commission to be placed on the primary highway system.

(4) "Secondary highway system" means the highways that have been functionally classified by the department as either minor arterials or major collectors and that have been selected by the commission, in cooperation with the boards of county commissioners, to be placed on the secondary highway system.

(5) "State highways" means the highways throughout the state that are not located on a defined highway system but that are on the state maintenance system.

(6) "Urban highway system" means the highways and streets that are in and near incorporated cities with populations of over 5,000 and within urban boundaries established by the department, that have been functionally classified as either urban arterials or collectors, and that have been selected by the commission, in cooperation with local government authorities, to be placed on the urban highway system.

History: En. Sec. 1, Ch. 87, L. 1993.

60-2-126. Designation of public highways — allocation of funds. (1) For the purpose of allocating state and federal-aid highway funds, the commission shall designate the public highways and streets to be placed on the following systems:

(a) the national highway system;
(b) the primary highway system;
(c) the secondary highway system; or
(d) the urban highway system.

(2) The commission shall consult with the board of county commissioners of the county in which a highway is located prior to designating a public highway to be placed on the secondary highway system.

(3) The commission shall consult with the appropriate local government authorities prior to designating a highway or street to be placed on the urban highway system.

(4) The commission may designate public highways not placed on the systems listed in subsection (1) as state highways.

History: En. Sec. 2, Ch. 87, L. 1993.

Cross-References

Transportation Commission, 2-15-2502.

60-2-127. Allocation of funds for projects. (1) Each year, out of federal-aid highway funds available for construction purposes, the commission shall allocate a portion of the funds for projects located on:

(a) the national highway system;
(b) the primary highway system;
(c) the secondary highway system;
(d) the urban highway system; and
(e) state highways.

(2) In making allocations under subsection (1), the commission shall comply with all applicable provisions relating to the use of federal-aid highway funds contained in Title 23, U.S.C.

(3) Notwithstanding the allocations made available to the secondary and urban highway systems in subsection (1), the commission may, with the concurrence of the appropriate local officials, authorize the use of federal-aid highway funds allocated under subsections (1)(c) and (1)(d) for any project eligible under 23 U.S.C. 133(b) relative to the surface transportation program.

History: En. Sec. 3, Ch. 87, L. 1993; amd. Sec. 1, Ch. 298, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 298 inserted (3) allowing the commission, with the concurrence of appropriate local officials, to authorize the use of federal-aid highway funds allocated under subsections (1)(c) and (1)(d) for any project eligible under 23 U.S.C. 133(b) relative to the surface transportation program. Amendment effective October 1, 1999.

Cross-References

Authority to contract for road work when federal funds involved, 7-14-4108.

60-2-128. Maintenance system — designation of highways. The commission shall designate the public highways that are to be included on the state maintenance system. Except as provided in 60-2-107, the system must include all the highways that the department maintained on July 1, 1976.

History: En. Sec. 4, Ch. 87, L. 1993; amd. Sec. 2, Ch. 178, L. 1997.

Cross-References

Duties of County Surveyor related to roads and bridges in certain counties, 7-4-2812 through 7-4-2815.

Maintenance of frontage roads, 60-5-108.

Violation of size, weight, or load requirements — disposition of fines and forfeited bonds, 61-10-148.

60-2-129. Allocation of funds. (1) The commission may allocate federal-aid highway funds for projects or programs in which all or a portion of the work is on highways that are not located on the highway systems defined in 60-2-125. The allocations must be made without regard to the financial district in which the project or program is located.

(2) Within the programs under its jurisdiction, the commission shall allocate all federal transit administration funds, freight assistance funds, or any funds or grants available by legislative appropriation for the study, design, construction, repair, or improvement of rail or transit intermodal transportation systems.

(3) The commission may authorize the transfer of federal funds between qualified programs, including highway and transit programs.

(4) The commission may delegate the functions and responsibilities under this section to the department.

History: En. Sec. 6, Ch. 87, L. 1993; amd. Sec. 4, Ch. 75, L. 1995.

Cross-References

Distribution and apportionment of highway funds, Title 60, ch. 3.

Part 2

Department of Transportation General Powers and Duties

Part Cross-References

Department of Transportation, Title 2, ch. 15, part 25.

State-owned motor vehicles, Title 2, ch. 17, part 4.

Department of Transportation — grievance procedures, Title 2, ch. 18, part 10.

Cooperative agreements with district weed boards, 7-22-2151.

National defense highway plans, 10-3-107.

Gasoline and vehicle fuels taxes, Title 15, ch. 70.

Connecting roads between state highways and state parks, 23-1-104.

Operation of snowmobiles on public roads, streets, and highways, 23-2-631, 23-2-632.

Enforcement of provisions relating to snowmobiles, 23-2-641, 23-2-642.

Highway safety, Title 61, ch. 2.

Authority for reciprocity agreements, provisions, and reciprocity standards, 61-3-714.

Traffic regulation, Title 61, ch. 8.

Shooting from or across road or highway right-of-way prohibited, 61-8-369.

Motor vehicles — size — weight — load, Title 61, ch. 10.

Enforcement by Department of Transportation personnel, Title 61, ch. 12, part 2.

Aircraft landings and takeoffs on public roads, 67-1-204.

Assistance in airport road construction — Department of Transportation, 67-10-211.

Regulation of carriers, Title 69, ch. 11.

Motor carriers, Title 69, ch. 12.

Outdoor advertising, Title 75, ch. 15, part 1.

Disabled person — hunting from vehicle allowed — exception, 87-2-803.

Unlawful to kill wildlife from vehicle on highway, 87-3-101.

Restrictions on use of motor vehicles while hunting, 87-3-125.

Coal Board grants for certain highway construction, repair, and maintenance, 90-6-205.

Coal area highway reconstruction program, 90-6-210.

60-2-201. General powers of department. (1) The department may plan, lay out, alter, construct, reconstruct, improve, repair, and maintain highways on the federal-aid systems and state highways according to priorities established by and on projects selected and designated by the commission.

(2) The department may cooperate and contract with counties and municipalities to provide assistance in performing these functions on other highways and streets.

(3) The department may review and approve projects for the installation of public works on state highway rights-of-way and authorize a county or municipality to let contracts related to such improvements.

(4) The department shall adopt necessary rules for the construction, repair, maintenance, and marking of state highways and bridges.

History: (1) thru (3)En. Sec. 4-106, Ch. 197, L. 1965; amd. Sec. 74, Ch. 316, L. 1974; amd. Sec. 1, Ch. 283, L. 1977; Sec. 32-2406, R.C.M. 1947; (4)En. Sec. 4-107, Ch. 197, L. 1965; amd. Sec. 1, Ch. 201, L. 1967; amd. Sec. 75, Ch. 316, L. 1974; Sec. 32-2407, R.C.M. 1947; R.C.M. 1947, 32-2406(part), 32-2407(part); amd. Sec. 1, Ch. 324, L. 1979; amd. Sec. 2, Ch. 30, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Transportation Commission, 2-15-2502.

State-owned motor vehicles, Title 2, ch. 17, part 4.

State seal on motor vehicles, 2-17-402.

Local government — special improvement districts, Title 7, ch. 12, parts 41 through 43.

General provisions related to municipal utility services, Title 7, ch. 13, part 41.

General provisions related to county roads, Title 7, ch. 14, parts 21 through 26.

General provisions related to municipal trafficways and public grounds, Title 7, ch. 14, part 41.

Disposition of highway equipment by bid, 18-6-103.

Department of Transportation to sign all state highways, 61-8-203.

Erection of signs, 61-8-704.

Penalty — injury to or removal of sign or marker a misdemeanor, 61-8-713.

When authorities may restrict right to use roadway, 61-10-128.

Outdoor Advertising Act — Department of Transportation, Title 75, ch. 15, part 1.

60-2-202. Duties of department. The department shall:

(1) maintain and preserve the records of the commission in its office at Helena; and

(2) file and preserve copies of all plans, specifications, contracts, estimates, and official acts taken by it or by the commission.

History: En. Sec. 4-109, Ch. 197, L. 1965; amd. Sec. 11, Ch. 93, L. 1969; amd. Sec. 77, Ch. 316, L. 1974; R.C.M. 1947, 32-2409(2); amd. Sec. 12, Ch. 140, L. 1985; amd. Sec. 2, Ch. 82, L. 1991.

Cross-References

Powers and duties of Governor, 2-15-201.

Transportation Commission, 2-15-2502.

60-2-203. Maintenance responsibility. (1) The department shall maintain all public highways or portions of public highways that it maintained on July 1, 1976.

(2) The department shall assume the maintenance responsibilities for paved secondary roads as roads are identified cooperatively by the department and the county or counties in which a paved secondary road or paved secondary road segment is located. The department may phase in maintaining the paved secondary roads but must have completely assumed the responsibilities by January 1, 2001.

History: En. 32-2402.2 by Sec. 2, Ch. 390, L. 1977; R.C.M. 1947, 32-2407.2; amd. Sec. 1, Ch. 542, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 542 inserted (2) requiring department to assume maintenance responsibility for identified paved secondary roads and authorizing department to phase in maintenance, with complete assumption by January 1, 2001; and made minor changes in style. Amendment effective April 30, 1999.

Cross-References

Duties of County Surveyor related to roads and bridges in certain counties, 7-4-2812.

Duties of County Commissioners concerning county roads, 7-14-2103.

Maintenance of trafficways, 7-14-4107.

Maintenance of frontage roads, 60-5-108.

Unlawful disposal of dead animals, 75-10-213.

Penalty for unlawful dumping, 75-10-233.

60-2-204. Maintenance agreements with local governments. Except as provided in 60-2-203, the department may enter into an agreement with a local governing body to maintain portions of public highways within its boundaries upon terms and conditions as may be agreed upon. However, in the case of highways in the state maintenance system as referred to in 60-2-128 and 60-2-203:

(1) the department shall bear the entire cost of maintenance, operation, and construction work performed by the local governing body pursuant to these agreements; and

(2) the department is responsible for the entire cost of placement and maintenance of all traffic control devices involved in these agreements required by 61-8-203.

History: En. 32-2402.3 by Sec. 3, Ch. 390, L. 1977; R.C.M. 1947, 32-2407.3; amd. Sec. 1, Ch. 411, L. 1979; amd. Sec. 10, Ch. 87, L. 1993; amd. Sec. 2, Ch. 542, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 542 at beginning inserted exception clause; and made minor changes in style. Amendment effective April 30, 1999.

Cross-References

Duties of County Surveyor related to roads and bridges in certain counties, 7-4-2812.

Duties of County Commissioners concerning county roads, 7-14-2103.

Maintenance of trafficways, 7-14-4107.

60-2-205. Powers of department with respect to highways not located entirely within the state. The department may expend funds for the construction, reconstruction, engineering, administration, betterment, and maintenance of highways designated under 60-2-106. It may do all things necessary or required to carry out fully the cooperation contemplated under Title 23, U.S.C., with regard thereto.

History: En. Sec. 4-108, Ch. 197, L. 1965; amd. Sec. 76, Ch. 316, L. 1974; R.C.M. 1947, 32-2408(2); amd. Sec. 6, Ch. 23, L. 1979.

60-2-206. Compilation of statistics — investigation — consultation. (1) The department shall compile statistics regarding public highways throughout the state and collect all related information deemed expedient.

(2) It shall investigate various methods of construction adapted to different sections of the state and decide the best methods of construction and maintenance of highways, bridges, and road markers.

(3) The department may be consulted at all reasonable times by county officers having care and authority over highways and bridges and shall advise them on construction, repair, alteration, or maintenance.

(4) The department shall furnish such information and advice as may be requested by persons interested in the construction, maintenance, and marking of public highways. It shall at all times lend its aid in promoting highway improvement throughout the state.

History: En. Sec. 4-110, Ch. 197, L. 1965; amd. Sec. 78, Ch. 316, L. 1974; R.C.M. 1947, 32-2410.

Cross-References

General powers of county relating to roads and bridges, 7-14-2101.

60-2-207. Agreements concerning analysis of effects of weight on highways. (1) The department may contract with the United States or any state or group of states or agencies thereof or any nonprofit association, on a joint or cooperative basis, to study, analyze, or test the effects of weights on highways. Studies or tests shall seek solutions to the problems connected with the imposition of motor vehicle weights on highways.

(2) Studies or tests may be made either by designating existing highways or by constructing test strips, including natural resource roads.

History: En. Sec. 4-111, Ch. 197, L. 1965; amd. Sec. 79, Ch. 316, L. 1974; R.C.M. 1947, 32-2411.

Cross-References

Motor vehicles — size — weight — load, Title 61, ch. 10.

Coal area highway reconstruction program, 90-6-210.

60-2-208. Seeding along highways. (1) After a federal-aid or state highway is constructed, the department shall seed barrow pits, slopes, and shoulders to an adaptable perennial grass or combination of perennial grasses and legumes whenever establishment of perennial grass covers seem suitable. The seed must be certified.

(2) The department shall seek joint recommendations and specifications as to time and method of seeding, fertilizing practices, and grass species from the Montana extension service, the experiment station, and the natural resources conservation service.

(3) After a right-of-way in open range has been fenced pursuant to 60-7-103, the department may seed the land within the fence with a grass that may be cropped for hay and may lease the land or sell the right to take the hay to qualified persons.

History: En. Sec. 4-112, Ch. 197, L. 1965; amd. Sec. 6, Ch. 255, L. 1974; amd. Sec. 80, Ch. 316, L. 1974; R.C.M. 1947, 32-2412; amd. Sec. 243, Ch. 42, L. 1997.

Cross-References

Montana seed laboratory, 20-25-229.

Forest and conservation experiment station, 20-25-241 through 20-25-245.

Administration of certain islands and abandoned riverbeds, 77-1-103.

60-2-209. Description and plan of new highway or reconstructed or controlled-access facility. (1) Whenever the department establishes the location, width, and lines of any new, reconstructed, or proposed highway or the commission designates a road, street, or highway as a controlled-access facility, the department shall make a description and plan showing the centerline and the established width, the immediate boundary lines of all private property over, across, or through which the highway passes, the name of the owner of the property, the boundaries of that part of the private ownership included within the right-of-way of the highway, the parcel number assigned to that part of each ownership included within the highway right-of-way, together with the project number under which the highway is or is proposed to be constructed or reconstructed.

(2) Reference to the project number, parcel number, and section or quarter section, tract, block, or lot from which the same has been subdivided is a valid

description of the parcel in all deeds given to or received from the state in which a parcel is transferred.

History: En. Sec. 4-113, Ch. 197, L. 1965; amd. Sec. 1, Ch. 131, L. 1969; amd. Sec. 81, Ch. 316, L. 1974; R.C.M. 1947, 32-2413.

Cross-References

General power of Department to acquire interests in property, 60-4-102.

Exemption from surveying and platting requirements for lands acquired for state highways, 76-3-209.

60-2-210. Payment of construction and maintenance costs within municipalities. The department, either solely or in conjunction with a city, county, or consolidated local government, shall pay the costs of construction of streets, curbs, gutters, and sidewalks and maintenance of streets, highways, curbs, and gutters that are:

(1) state highway routes; and

(2) within incorporated municipalities.

History: En. Sec. 1, Ch. 210, L. 1965; amd. Sec. 40, Ch. 316, L. 1974; R.C.M. 1947, 32-1627; amd. Sec. 1, Ch. 153, L. 1979; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 1, Ch. 106, L. 1995.

Cross-References

General provisions related to municipal trafficways and public grounds, Title 7, ch. 14, part 41.

60-2-211. Bypassing of municipalities — consent of municipal governing body. (1) The department may not construct highway bypasses or highway relocation projects without prior consent of the governing body of an incorporated municipality when the bypasses or projects:

(a) are not part of the national system of interstate highways built under the National Defense Highway Act; and

(b) divert motor vehicles from an existing highway route through a municipality incorporated prior to January 1, 1965.

(2) The department shall notify the governing body of the municipality by certified mail that it proposes to bypass the municipality. A contract may not be let or work commenced until the governing body notifies the department of its consent or until the elapse of 60 days after the notice has been sent by the department to the municipality, whichever first occurs. The failure of the municipality to act and notify the department of its action within the 60-day period is implied consent to the bypass.

(3) Actual consent or refusal to bypass shall be in the form of a resolution duly adopted by a majority of the members of the governing body of the municipality.

(4) The governing body may not withdraw consent once the department has been notified of the consent.

History: En. Sec. 2, Ch. 210, L. 1965; amd. Sec. 41, Ch. 316, L. 1974; R.C.M. 1947, 32-1628.

Cross-References

Municipalities — governing body defined, 7-1-4121.

60-2-212 reserved.

60-2-213. Interstate emergency maintenance service agreements. (1) The department may negotiate and enter into a bilateral agreement with an adjoining state or province to provide for the exchange of emergency maintenance services on highways located in Montana or the adjoining state or province.

(2) An agreement authorized under subsection (1) must be confined to emergency situations. The department is prohibited from entering into agreements with adjoining states or provinces that would result in an adjoining state or province performing routine maintenance on highways located in Montana.

History: En. Sec. 1, Ch. 167, L. 1991.

60-2-214 and 60-2-215 reserved.

60-2-216. Repealed. Sec. 35, Ch. 308, L. 1995.

History: En. Sec. 1, Ch. 423, L. 1985; amd. Sec. 34, Ch. 658, L. 1987.

60-2-217. Signs identifying mountain ranges — scenic loop highways — costs — responsibility of department. (1) Subject to the provisions of federal law, the department shall design and erect at relevant locations signs, clearly visible to traffic, identifying:

(a) each prominent mountain range that is visible to an occupant of a vehicle traveling on a primary or interstate highway in Montana; and

(b) the junctions with primary or interstate highways in Montana of scenic highways designated under authority of the commission or the department. The signs must mark where the scenic loop leaves and returns to the primary or interstate highway.

(2) (a) The department may not pay the cost of the manufacture and erection of the signs provided for in subsection (1)(b) out of funds appropriated to the department.

(b) Scenic loop highway signs are intended to provide tourist information, and the department's responsibility for the construction, maintenance, or traffic operation of the highway so signed is not affected by the signs.

(c) Erection of scenic loop highway signs does not create a scenic highway.

History: En. Sec. 1, Ch. 325, L. 1987; amd. Sec. 1, Ch. 144, L. 1989.

60-2-218. Welcome and farewell signs — design, erection, maintenance — completion date — exceptions. (1) The department shall:

(a) design, erect, and maintain welcome and farewell signs within Montana at the nearest practical location to the border of the state where each federal-aid interstate highway, except interstate 90 at the Montana-Idaho border in Mineral County, and each federal-aid primary highway enters or leaves Montana;

(b) select locations for the signs consistent with the requirements for public safety and maximum visibility and with all applicable provisions of federal law; and

(c) subject to the exception in this subsection (1), complete the construction and erection of welcome and farewell signs:

(i) on the four interstate highways and on highway 212 in Carter County before July 1, 1991; and

(ii) on the remainder of the primary highways at the earliest possible date.

(2) However, nothing in this section prevents the department from constructing and erecting signs on the remaining primary highways before July 1, 1991.

History: En. Sec. 1, Ch. 621, L. 1989; amd. Sec. 1, Ch. 363, L. 1995.

60-2-219. Department authorized to accept and expend funds for welcome and farewell signs. The department may accept money from other state agencies, federal agencies, or private persons for the purposes of 60-2-218 and may expend the money received for those purposes.

History: En. Sec. 2, Ch. 621, L. 1989.

60-2-220. Butte-Anaconda cultural heritage area — signs — location and design — funding. (1) There is established a cultural heritage area encompassing Silver Bow County and Deer Lodge County.

(2) Subject to the provisions of federal law, the department shall, as funds are available under subsection (4), erect and maintain at specified locations on the primary and interstate highways in Silver Bow County and Deer Lodge County signs identifying those counties as a cultural heritage area.

(3) The consolidated governments of Butte-Silver Bow and Anaconda-Deer Lodge shall design the signs and designate the general locations for the signs. The department shall determine the exact location of each sign.

(4) The department may accept money from other state agencies, federal agencies, local governments, or private persons for the purposes of subsections (2) and (3) and may expend the money received for those purposes.

(5) As used in this section, "department" means the department of transportation provided for in 2-15-2501.

History: En. Secs. 1, 2, Ch. 127, L. 1993; amd. Sec. 48, Ch. 422, L. 1997.

60-2-221. Renumbered 60-2-241 by Code Commissioner, 1989.

60-2-222. Terminated. Sec. 6, Ch. 667, L. 1989.

History: En. Sec. 1, Ch. 667, L. 1989.

60-2-223. Terminated. Sec. 6, Ch. 667, L. 1989.

History: En. Sec. 2, Ch. 667, L. 1989.

60-2-224. Repealed. Sec. 82, Ch. 509, L. 1995.

History: En. Sec. 3, Ch. 667, L. 1989.

60-2-225 through 60-2-240 reserved.

60-2-241. Prohibited materials. Neither the department nor any agency of state or local government may use mineral slag in road sanding or snow removal within one-fourth mile of lakes and within 100 yards of streambeds.

History: En. Sec. 1, Ch. 541, L. 1987; Sec. 60-2-221, MCA 1987; redes. 60-2-241 by Code Commissioner, 1989.

Cross-References

Lakeshores, Title 75, ch. 7, part 2.

Streambeds, Title 75, ch. 7, part 1.

60-2-242. Markers — commemorative highways. (1) As funds are available under subsection (2), the department may design and erect signs along the commemorative highways designated in 60-1-202 through 60-1-207 identifying the routes and providing interpretive information.

(2) The department may accept money from other state agencies, federal agencies, local governments, or private persons for the purposes of subsection (1) and may expend the money received for those purposes.

History: En. Sec. 2, Ch. 321, L. 1997.

60-2-243. Visitor information centers — signs. (1) Subject to the provisions of federal law, the department of commerce shall design and the department of transportation shall erect signs identifying the Montana visitor information centers established and maintained by the department of commerce and in existence on October 1, 1999.

(2) (a) Each visitor information center must have two signs identifying it to the traveling public.

(b) The first sign must be erected at the nearest practical location to the border of the state along the highway leading to the visitor information center and must indicate the number of miles to the visitor information center.

(c) The second sign must be erected along the highway at the exit leading to the visitor information center or at the nearest practical location to the visitor information center where the sign may be easily seen and read by the traveling public. This sign must contain directions to the center and the information that is provided at the center.

History: En. Sec. 1, Ch. 417, L. 1999.

Compiler's Comments

Effective Date: This section is effective October 1, 1999.

Part 3

Ports of Entry, Checking Stations, and Interstate Cooperation

Part Cross-References

Time for payment of size, weight, and load fees by nonresidents — disposition, 61-10-213.

Importation of salmonid fish and eggs, 87-3-221 through 87-3-224.

60-2-301. Ports of entry and checking stations authorized. To augment and help make more efficient and effective the enforcement of certain laws of the state, the department shall establish temporary or permanent ports of entry or checking stations upon highways in the state at places which the department considers necessary and advisable.

History: En. Sec. 1, Ch. 137, L. 1965; amd. Sec. 84, Ch. 316, L. 1974; R.C.M. 1947, 32-2419.

Cross-References

Size — weight — load, Title 61, ch. 10.

60-2-302. Repealed. Sec. 1, Ch. 104, L. 1983.

History: En. Sec. 2, Ch. 137, L. 1965; amd. Sec. 85, Ch. 316, L. 1974; R.C.M. 1947, 32-2420.

60-2-303. Cooperation in use of ports of entry and checking stations. The department shall cooperate with other agencies and political subdivisions of this state in the use of the ports of entry or checking stations so that maximum use can be made of the facilities in enforcement of the laws of this state.

History: En. Sec. 3, Ch. 137, L. 1965; amd. Sec. 86, Ch. 316, L. 1974; R.C.M. 1947, 32-2421.

Cross-References

Multistate Highway Transportation Agreement, Title 61, ch. 10, part 11.

Enforcement of salmonid fish and eggs importation provisions at ports of entry and checking stations, 87-3-224.

60-2-304 through 60-2-310 reserved.

60-2-311. Interstate agreements for tax and fee collection and port operation. The department may negotiate and enter into a bilateral agreement with an official of an adjoining state or province to provide for the collection by either party state or province of highway user fees, registration fees, permit fees, fuel taxes, or any other fees and taxes that may be prescribed by law or rule. An agreement may further provide for the construction and joint operation of ports of entry along state borders.

History: En. Sec. 1, Ch. 474, L. 1983.

Cross-References

Multistate Tax Compact, Title 15, ch. 1, part 6.

Gasoline and vehicle fuels taxes, Title 15, ch. 70.

Certificates of ownership, registration, and taxation of motor vehicles, Title 61, ch. 3.

Gross vehicle weight fees, 61-10-124; 61-10-125; Title 61, ch. 10, part 2.

Multistate Highway Transportation Agreement for size and weight standards, Title 61, ch. 10, part 11.

Parts 4 and 5 reserved

Part 6

Scenic-Historic Byways Program

Part Compiler's Comments

Effective Date: Section 4, Ch. 546, L. 1999, provided: "(1) Except as provided in subsection (2), [this act] is effective July 1, 1999.

(2) On passage and approval, the commission may establish and appoint members to a scenic-historic advisory council and the department may promulgate rules to effect the purposes of the scenic-historic byways program." Approved April 30, 1999.

60-2-601. Scenic-historic byways program — advisory council — expenditure of funds. (1) There is a scenic-historic byways program. The commission may designate roads to be included as part of the program and may add or delete roads from the program. The commission may not designate a road as a scenic-historic byway without the concurrence of the affected local governments and the agencies responsible for maintenance and operation of the road. A road or right-of-way across federal land that was granted by 43 U.S.C. 932 and recognized by 43 U.S.C. 1701 may be considered for inclusion in the program.

(2) Notwithstanding the provision of 2-15-122, the commission shall appoint an advisory council for the scenic-historic byways program.

(3) The advisory council is a technical oversight council composed of no more than 11 members who must have expertise in one or more of the subjects of tourism, visual assessment, Montana history, resource protection, economic development, transportation, or planning. One member of the advisory council must be a representative of the Montana chamber of commerce.

(4) The advisory council shall:

(a) assist the department and the commission in designing the program;

(b) review applications for nominating roads to the scenic-historic byways program; and

(c) recommend to the commission roads that should be included in or deleted from the scenic-historic byways program.

(5) The department, upon the direction of the commission, may expend any funds appropriated for or otherwise available to the scenic-historic byways program.

History: En. Sec. 2, Ch. 546, L. 1999.

60-2-602. Scenic-historic byways program — rules. (1) The department shall adopt rules to effectively administer the scenic-historic byways program. The rules must include the criteria that will be considered for designating a road for inclusion in the scenic-historic byways program.

(2) In developing the criteria, to be included in the rules, for designating a road for inclusion in the scenic-historic byways program, the advisory council, commission, and department shall specifically address:

(a) factors that allow each locality choosing to participate in or seeking participation in the scenic-historic byways program the opportunity to:

(i) enhance the experience of the traveling public;

(ii) stimulate or allow for economic development and new marketing strategies; or

(iii) preserve intrinsic resources for the benefit of future generations;

(b) a methodology by which a locality choosing to participate in or seeking participation in the scenic-historic byways program may participate in the national scenic byways program, described in section 1047 of Public Law 102-240;

(c) means by which a road may be excluded from designation as a scenic-historic byway by:

(i) an incorporated municipality for a road or segment of a road within its jurisdiction; or

(ii) a landowner for a road or segment of a road adjacent to the landowner's private property;

(d) factors to be considered in assessing the intrinsic, scenic, historic, recreational, cultural, archaeological, educational, or natural qualities of the road nominated for inclusion in the scenic-historic byways program;

(e) factors to be considered in a locality's corridor management plan, including that the plan:

(i) serves as a visioning tool to provide direction for enhancing and marketing the corridor, but not as a land management document, zoning tool or mandate, highway improvement scoping or prioritization document, or highway management document;

(ii) accommodates commerce and commercial vehicles and maintains a safe and efficient level of highway services;

(iii) protects private property rights, including assurances that the private property rights of a person who owns land adjacent to or visible from the road are not in any way diminished by the road being designated a scenic-historic byway or are accommodated through mutually agreeable compensation;

(iv) precludes the locality having adopted the corridor management plan from establishing goals or commitments outside the locality's jurisdiction; and

(v) has accommodated all jurisdictions affected or to be affected by the designation of a road as a scenic-historic byway; and

(f) procedures to ensure that localities choosing to participate in the scenic-historic byways program:

(i) may exclude from designation any segment of a highway that is inconsistent with the state's criteria for designating scenic-historic byways. Within an excluded segment, a locality may allow off-premises advertising in the form of billboards or painted signs, subject to applicable federal, state, or local laws.

(ii) may use signage recognized as exceptions or as information signs in all areas along a designated route, provided that the signage complies with 23 U.S.C. 131, Title 60, chapter 5, part 5, Title 75, chapter 15, part 1, and all applicable state or locally adopted rules, requirements, and restrictions.

History: En. Sec. 3, Ch. 546, L. 1999.

CHAPTER 3

DISTRIBUTION AND APPORTIONMENT OF HIGHWAY FUNDS

Part 1 — Federal-Aid Funds

60-3-101. Assent to federal law.
60-3-102 through 60-3-105. Repealed.

Part 2 — State Funds

60-3-201. Distribution and use of proceeds of gasoline dealers' license tax.
60-3-202. Funding highway system maintenance.
60-3-203. Repealed.
60-3-204. Repealed.
60-3-205. Apportionment of state funds to primary highway system.
60-3-206. Apportionment of funds to secondary highway system.
60-3-207. Secondary highway information.
60-3-208. Repealed.
60-3-209. Repealed.
60-3-210. Repealed.
60-3-211. Apportionment of state funds to urban highway system.
60-3-212. Interim apportionment to match federal-aid funds.
60-3-213. Repealed.
60-3-214. Repealed.
60-3-215. Repealed.
60-3-216. Terminated.
60-3-217. Terminated.
60-3-218. Terminated.
60-3-219. Allocation of funds — apportionment.
60-3-220 reserved.
60-3-221 through 60-3-234. Repealed.

Part 3 — Footpaths and Bicycle Trails

60-3-301. Short title.
60-3-302. Bicycle trail defined.
60-3-303. Footpaths and bicycle trails to be established — funding.
60-3-304. Duties of department of transportation.

Chapter Cross-References

Highway revenue nondiversion, Art. VIII, sec. 6, Mont. Const.

Public contractor's fees and tax, Title 15, ch. 50.

Gasoline and vehicle fuels taxes, Title 15, ch. 70.

Budgeting and appropriations, Title 17, ch. 7.

Special property tax applications — custom combines, 61-10-130.

Acceptance of gift of lands to state, 77-1-213.

Coal Board grants for certain highway construction, repair, and maintenance, 90-6-205.

Coal area highway reconstruction program, 90-6-210.

Part 1
Federal-Aid Funds

Part Cross-References

Authority to contract for road work when federal funds involved, 7-14-4108.

60-3-101. Assent to federal law. (1) The legislature, for and on behalf of the state, assents to the provisions of Title 23, U.S.C.

(2) The department may, for and on behalf of the state, enter into all contracts and agreements with the United States or any officer, department, or bureau thereof relating to the construction, reconstruction, repair, and maintenance of highways in the state.

(3) The department may make all rules necessary to comply with the provisions of the laws assented to and all other laws granting aid for public highways and to obtain for the state the full benefits of such laws.

(4) The department may do all other things necessary or required to carry out fully the cooperation contemplated by the acts of congress assented to.

History: En. Sec. 4-101, Ch. 197, L. 1965; amd. Sec. 71, Ch. 316, L. 1974; R.C.M. 1947, 32-2401; amd. Sec. 7, Ch. 23, L. 1979.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

60-3-102 through 60-3-105. Repealed. Sec. 19, Ch. 87, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

60-3-102. En. Sec. 1, Ch. 286, L. 1967; amd. Sec. 87, Ch. 316, L. 1974; R.C.M. 1947, 32-2422.

60-3-103. En. Sec. 2, Ch. 286, L. 1967; amd. Sec. 88, Ch. 316, L. 1974; R.C.M. 1947, 32-2423; amd. Sec. 8, Ch. 23, L. 1979.

60-3-104. En. Sec. 3, Ch. 286, L. 1967; amd. Sec. 89, Ch. 316, L. 1974; R.C.M. 1947, 32-2424.

60-3-105. En. Sec. 4, Ch. 286, L. 1967; amd. Sec. 90, Ch. 316, L. 1974; R.C.M. 1947, 32-2425; amd. Sec. 9, Ch. 23, L. 1979.

Part 2
State Funds

Part Cross-References

Allocation of state funds for public transportation, 7-14-102.

Payment of cost of weed control program, 7-22-2144.

Coal Board grants for certain highway construction, repair, and maintenance, 90-6-205.

60-3-201. Distribution and use of proceeds of gasoline dealers' license tax. (1) All money received in payment of license taxes under the Distributor's Gasoline License Tax Act, except those amounts paid out of the department of transportation's suspense account for gasoline tax refund, must be used and expended as provided in this section. The portion of that money on hand at any time that is needed to pay highway bonds and interest on highway bonds when due and to accumulate and maintain a reserve for payment of highway bonds and interest, as provided in laws and in resolutions of the state board of examiners authorizing the bonds, must be deposited in the highway bond account in the debt service fund established by 17-2-102. After deductions for amounts paid out of the suspense account for gasoline tax refunds, the remainder is allocated as follows:

(a) 9/10 of 1% to the state park account;

(b) 15/28 of 1% to a snowmobile account in the state special revenue fund;

(c) 1/8 of 1% to an off-highway vehicle account in the state special revenue fund; and

(d) 1/25 of 1% to the aeronautics revenue fund of the department of transportation under the provisions of 67-1-301.

(e) The remainder of the money must be used:

(i) by the department of transportation on the highways in this state selected and designated by the commission;

(ii) for collection of the license taxes; and

(iii) for the enforcement of the Montana highway code under Article VIII, section 6, of the constitution of this state.

(2) The department shall, in expending this money, carry forward construction from year to year, using the money expended in accordance with this title. Nothing in this title conflicts with Title 23, U.S.C., and the rules by which it is administered.

(3) The department may enter into cooperative agreements with the national park service and the federal highway administration for the purpose of maintaining national park approach roads in Montana.

(4) Money credited to the state park account in the state special revenue fund may be used only for the creation, improvement, and maintenance of state parks where motorboating is allowed. The legislature finds that of all the fuel sold in the state for consumption in internal combustion engines, except fuel for which refunds have been made, not less than 9/10 of 1% is used for propelling boats on waterways of this state.

(5) (a) Money credited to the snowmobile account may be used only to develop and maintain facilities open to the general public at no admission cost, to promote snowmobile safety, for enforcement purposes, and for the control of noxious weeds.

(b) Of the amounts deposited in the snowmobile account:

(i) 13% of the amount deposited must be used by the department of fish, wildlife, and parks to promote snowmobile safety and education and to enforce snowmobile laws. Two-thirds of the 13% deposited must be used to promote snowmobile safety and education and one-third of the 13% deposited must be used for the enforcement of snowmobile laws.

(ii) 1% of the amount deposited must be credited to the Montana noxious weed control trust fund.

(c) The legislature finds that of all fuels sold in this state for consumption in internal combustion engines, except fuel for which refunds have been made, not less than 15/28 of 1% is used for propelling registered snowmobiles in this state.

(6) (a) Money credited to the off-highway vehicle account under subsection (1)(c) may be used only to develop and maintain facilities open to the general public at no admission cost, to repair areas that are damaged by off-highway vehicles, and to promote off-highway vehicle safety. Ten percent of the money deposited in the off-highway vehicle account must be used to promote off-highway vehicle safety. Up to 10% of the money deposited in the off-highway vehicle account may be used to repair areas that are damaged by off-highway vehicles.

(b) The legislature finds that of all fuel sold in this state for consumption in internal combustion engines, except fuel for which refunds have been made, not less than 1/8 of 1% is used for propelling off-highway vehicles in this state.

(7) Money credited to the aeronautics account of the department of transportation may be used only to develop, improve, and maintain facilities open to the public at no admission cost and to promote aviation safety. The legislature finds that of all the fuel sold in this state for consumption in internal combustion engines, except fuel for which refunds have been made, not less than 1/25 of 1% is used for propelling aircraft in this state.

History: En. Sec. 4-301, Ch. 197, L. 1965; amd. Sec. 1, Ch. 251, L. 1967; amd. Sec. 6, Ch. 356, L. 1971; amd. Sec. 13, Ch. 100, L. 1973; amd. Sec. 94, Ch. 316, L. 1974; amd. Sec. 8, Ch. 477, L. 1975; amd. Sec. 1, Ch. 372, and Sec. 1, Ch. 382, L. 1977; R.C.M. 1947, 32-2601; amd. Sec. 10, Ch. 23, L. 1979; amd. Sec. 1, Ch. 607, L. 1979; amd. Sec. 26, Ch. 298, L. 1983; amd. Sec. 1, Ch. 558, L. 1985; amd. Sec. 10, Ch. 512, L. 1991; amd. Sec. 1, Ch. 698, L. 1991; amd. Sec. 11, Ch. 87, L. 1993; amd. Sec. 1, Ch. 40, Sp. L. November 1993; amd. Sec. 1, Ch. 356, L. 1995; amd. Sec. 5, Ch. 442, L. 1995.

Cross-References

Distributor's gasoline license tax, Title 15, ch. 70, part 2.

60-3-202. Funding highway system maintenance. For the purpose of funding the increased cost of maintaining the state highway system as designated in 60-2-128, 1/4 cent per gallon of the special fuel tax collected under 15-70-321 and 1/4 cent per gallon of the gasoline license tax collected under 15-70-204 are allocated for highway maintenance.

History: En. 32-2407.4 by Sec. 6, Ch. 390, L. 1977; R.C.M. 1947, 32-2407.4; amd. Sec. 12, Ch. 87, L. 1993.

60-3-203. Repealed. Sec. 19, Ch. 87, L. 1993.

History: En. Sec. 4-306, Ch. 197, L. 1965; amd. Sec. 95, Ch. 316, L. 1974; R.C.M. 1947, 32-2603; amd. Sec. 2, Ch. 62, L. 1983.

60-3-204. Repealed. Sec. 19, Ch. 87, L. 1993.

History: En. Sec. 4-308, Ch. 197, L. 1965; amd. Sec. 1, Ch. 283, L. 1971; amd. Sec. 97, Ch. 316, L. 1974; amd. Sec. 1, Ch. 31, L. 1975; R.C.M. 1947, 32-2605; amd. Sec. 1, Ch. 22, L. 1981.

60-3-205. Apportionment of state funds to primary highway system. (1) Prior to the beginning of each biennium, the commission, referring to highway sufficiency ratings developed by the department, shall designate a level of sufficiency considered adequate and a lesser level of sufficiency considered critical, both to be used to compute the apportionment of federal-aid highway funds for the primary highway system during the succeeding biennium.

(2) The department shall then compute the ratio:

(a) between the mileage rated below adequate sufficiency in each financial district and the total mileage rated below adequate sufficiency of the primary highway system in the state; and

(b) between the mileage rated at or below critical sufficiency in each financial district and the total mileage rated at or below critical sufficiency of the primary highway system in the state.

(3) The department, subject to the limitation provided in subsection (4), shall then distribute three-fourths of the available federal-aid highway funds for the primary highway system among the financial districts according to the ratios computed in subsection (2)(a) and one-fourth of the available federal-aid highway funds for the primary highway system among the financial districts according to the ratios computed in subsection (2)(b).

(4) A financial district may not receive more than one-third of the total funds available for the primary highway system in any biennium. If a financial district would receive more than one-third of the total funds available under the formula in subsection (3), its apportionment is limited to the one-third maximum and any excess funds that it would have received must be redistributed among the other districts according to the formula.

(5) (a) To the extent necessary to permit the orderly programming and construction of projects, the commission may transfer and obligate apportioned primary system funds for any project located on the federal-aid interstate or national highway systems within a financial district. The commission may transfer and obligate any amount of apportioned primary system funds to any other financial district if the financial district receiving primary system funds transfers an equal amount of federal-aid interstate or national highway system funds to the financial district from which the transfer originated. This transferred amount is in addition to the federal-aid interstate and national highway system funds that would have been obligated on these systems within the federal fiscal year of transfer.

(b) The intent of the provisions allowing transfers between financial districts is that a district may not receive less funding than the amount distributed by the formula of this subsection (5) and that a district may not transfer more than is received by virtue of this formula for a given federal fiscal year.

History: En. Sec. 4-309, Ch. 197, L. 1965; amd. Sec. 98, Ch. 316, L. 1974; amd. Sec. 2, Ch. 31, L. 1975; R.C.M. 1947, 32-2606; amd. Sec. 1, Ch. 412, L. 1983; amd. Sec. 13, Ch. 87, L. 1993; amd. Sec. 1, Ch. 177, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 177 in (5)(a) near beginning after "projects" substituted present language pertaining to transfer of apportioned primary system funds by the commission for "obligations in any financial district may exceed the amount apportioned to that district by up to 25%. The amount of excess obligations must be deducted from future apportionments to that district"; inserted (5)(b) explaining the intent of the provisions allowing transfers between districts; and made minor changes in style. Amendment effective October 1, 1999.

60-3-206. Apportionment of funds to secondary highway system. (1) Each fiscal year the department shall apportion at least 65% of the federal-aid highway funds allocated for the secondary highway system among the districts for capital construction needs. The remainder of the funds must be used by the department for secondary highway system pavement preservation. The proportion that each district receives is computed on the following basis:

(a) 30% in the ratio of land area in each district to the total land area in the state;

(b) 35% in the ratio of the rural population in each district to the total rural population in the state;

(c) 30% in the ratio of the rural road mileage in each district to the total rural road mileage in the state;

(d) 5% in the ratio of the rural bridge square footage in each district to the total rural bridge square footage in the state.

(2) To the extent necessary to permit orderly programming and construction of projects, obligations in a district may exceed the amount apportioned to that district if a majority of the boards of county commissioners of the counties in another district approve the donation of the extra amount. The amount of excess obligations must be deducted from future apportionments to that recipient district and returned to the donor district.

(3) For the purposes of this section, terms are defined as follows:

(a) "Capital construction" means a highway or bridge project undertaken to improve structural strength, increase capacity, or eliminate hazardous design features. A capital construction project may include paved or gravel road reconstruction and rehabilitation.

(b) "District" means the transportation commission districts identified in 2-15-2502.

(c) "Pavement preservation" means a project undertaken to extend the useful life of a paved road.

(d) "Rural bridge square footage" means the total square footage of all deck areas of structures 20 feet long or longer located on the roadways that are used to calculate rural road mileage as provided in subsection (3)(f).

(e) "Rural population" means the total population of all of the counties in a district as reported in the latest decennial federal census less the population in cities over 5,000 persons and their unincorporated fringe urban areas as determined by the department, using the latest decennial federal census.

(f) (i) "Rural road mileage" means all road mileage on roads functionally classified and approved by the transportation commission as major collectors or minor arterials, exclusive of road mileage on the primary highway system.

(ii) Road mileage within national parks or road mileage that lies within incorporated cities over 5,000 persons and their unincorporated fringe urban areas, whose population is determined by the department, using the latest decennial federal census, is not considered rural road mileage.

(iii) Rural road mileage reported by the road inventory of the department must be used in determining rural road mileage.

(4) For the purpose of determining secondary highway capital construction priorities within a district, each board of county commissioners in a district has one vote and the department has two votes. An existing paved secondary highway may not be converted to a graveled surface without the

concurrence of the board of county commissioners in the county where the road is located.

History: En. Sec. 4-310, Ch. 197, L. 1965; amd. Sec. 12, Ch. 391, L. 1973; amd. Sec. 99, Ch. 316, L. 1974; amd. Sec. 3, Ch. 31, L. 1975; R.C.M. 1947, 32-2607; amd. Sec. 2, Ch. 22, L. 1981; amd. Sec. 1, Ch. 25, L. 1989; amd. Sec. 14, Ch. 87, L. 1993; amd. Sec. 2, Ch. 239, L. 1997; amd. Sec. 3, Ch. 542, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 542 throughout section substituted references to district for references to county; in first sentence in (1) after "apportion" inserted "at least 65% of" and at end substituted "among the districts for capital construction needs" for "among the counties" and inserted second sentence requiring remainder of funds to be used for secondary highway system pavement preservation; in (1)(a) substituted "30%" for "one-fourth"; in (1)(b) substituted "35%" for "one-fourth"; in (1)(c) substituted "30%" for "one-fourth"; in (1)(d) substituted "5%" for "one-fourth" and in two places substituted "rural bridge square footage" for "value of rural land"; at end of first sentence in (2) substituted "district if a majority of the boards of county commissioners of the counties in another district approve the donation of the extra amount" for "county" and at end of second sentence substituted "recipient district and returned to the donor district" for "county"; inserted definitions of capital construction, district, pavement preservation, and rural bridge square footage; in definition of rural population substituted "the total population of all of the counties in a district" for "total county population"; in definition of rural road mileage substituted "on roads functionally classified and approved by the transportation commission as major collectors or minor arterials" for "outside of incorporated cities and towns" and after "system" deleted "and the national highway system, and those roads that are inside incorporated cities and towns and are functionally classified and approved by the commission as a major collector or a minor arterial, exclusive of road mileage on the primary system and the national highway system"; in (3)(f)(ii) after "mileage" inserted "within national parks or road mileage"; deleted former definition of value of rural lands that read: ""Value of rural lands" includes the value of state-owned lands from which the state derives grazing, timber, and agricultural income.

(i) The basis for the value of rural lands must be computed from the latest available information from the department of revenue.

(ii) The basis for the value of state-owned lands must be computed from the latest figures on the total grazing, timber, and agricultural lands in each county based on the most recent information available from the department of natural resources and conservation"; inserted (4) regarding voting for purpose of secondary highway capital construction priorities and prohibiting conversion of existing paved secondary highway to graveled surface without concurrence of county commissioners where road located; and made minor changes in style. Amendment effective April 30, 1999.

Cross-References

Classification of state lands, Title 77, ch. 1, part 4.

60-3-207. Secondary highway information. On or before November 30 of each year, the department shall inform each board of county commissioners of:

(1) the total amount of secondary highway funds and the amount apportioned to each county;

(2) the location of proposed secondary highway projects, when the information is available;

(3) any other matters regarding secondary highway construction which the department considers advisable and of interest to the counties.

History: En. Sec. 4-311, Ch. 197, L. 1965; amd. Sec. 100, Ch. 316, L. 1974; R.C.M. 1947, 32-2608; amd. Sec. 3, Ch. 22, L. 1981.

Cross-References

Duties of County Commissioners concerning county roads, 7-14-2103.

Reports to Department of Transportation, 7-14-2105.

Transfer to state of county responsibility for right-of-way, 7-14-2109.

60-3-208. Repealed. Sec. 1, Ch. 46, L. 1985.

History: **En. 32-2607.1 by Sec. 1, Ch. 79, L. 1977; R.C.M. 1947, 32-2607.1; amd. Sec. 1, Ch. 35, L. 1979; amd. Sec. 4, Ch. 22, L. 1981.**

60-3-209. Repealed. Sec. 19, Ch. 87, L. 1993.

History: **En. Sec. 4-312, Ch. 197, L. 1965; amd. Sec. 101, Ch. 316, L. 1974; amd. Sec. 4, Ch. 31, L. 1975; R.C.M. 1947, 32-2609; amd. Sec. 11, Ch. 23, L. 1979.**

60-3-210. Repealed. Sec. 19, Ch. 87, L. 1993.

History: **En. Sec. 4-313, Ch. 197, L. 1965; amd. Sec. 1, Ch. 290, L. 1973; amd. Sec. 102, Ch. 316, L. 1974; amd. Sec. 1, Ch. 318, L. 1974; R.C.M. 1947, 32-2610; amd. Sec. 5, Ch. 22, L. 1981.**

60-3-211. Apportionment of state funds to urban highway system. (1) Each fiscal year, the department shall apportion the federal-aid highway funds allocated for the urban highway system to the cities in the state with populations of over 5,000 in the ratio of urban population in each city to the total urban population in all cities in the state with populations of over 5,000.

(2) For the purpose of this section, "urban population" is defined as population within the incorporated limits of cities with populations of over 5,000 and that population within unincorporated urban fringe areas delineated and reported in the latest federal census.

(3) To the extent necessary to permit orderly programming and construction of projects, obligations in any city may exceed the amount apportioned to that city. The amount of any excess obligations must be deducted from future apportionments to that city.

History: **En. Sec. 4-314, Ch. 197, L. 1965; amd. Sec. 103, Ch. 316, L. 1974; amd. Sec. 5, Ch. 31, L. 1975; R.C.M. 1947, 32-2611; amd. Sec. 6, Ch. 22, L. 1981; amd. Sec. 15, Ch. 87, L. 1993.**

60-3-212. Interim apportionment to match federal-aid funds. During the interim between legislative sessions, the department of transportation is delegated power and authority to develop formulas to apportion state construction funds in an equitable manner consistent with the intent of this title to match federal-aid funds for highway systems or purposes not enumerated in this title. Such apportionment formulas shall be valid only until approved, modified, or rejected by the next legislative session.

History: **En. 32-2612 by Sec. 1, Ch. 402, L. 1973; R.C.M. 1947, 32-2612; amd. Sec. 12, Ch. 23, L. 1979; amd. Sec. 3, Ch. 512, L. 1991.**

Cross-References

Legislative sessions — time and place of meeting, 5-2-103.

60-3-213. Repealed. Sec. 19, Ch. 87, L. 1993.

History: **En. 32-2613 by Sec. 1, Ch. 216, L. 1974; amd. Sec. 6, Ch. 31, L. 1975; R.C.M. 1947, 32-2613; amd. Sec. 3, Ch. 512, L. 1991.**

60-3-214. Repealed. Sec. 19, Ch. 87, L. 1993.

History: **En. Sec. 4-307, Ch. 197, L. 1965; amd. Sec. 96, Ch. 316, L. 1974; R.C.M. 1947, 32-2604; amd. Sec. 7, Ch. 22, L. 1981; amd. Sec. 1, Ch. 38, L. 1981.**

60-3-215. Repealed. Sec. 19, Ch. 87, L. 1993.

History: **En. 32-2614 by Sec. 1, Ch. 102, L. 1974; amd. Sec. 1, Ch. 78, L. 1977; R.C.M. 1947, 32-2614; amd. Sec. 13, Ch. 23, L. 1979.**

60-3-216. Terminated. Secs. 4, 5, Ch. 456, L. 1995.

History: **En. Sec. 1, Ch. 541, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 5, Ch. 20, Sp. L. June 1986; amd. Sec. 2, Ch. 191, L. 1991.**

Cross-References

Treasury fund structure, 17-2-102.

60-3-217. Terminated. Secs. 4, 5, Ch. 456, L. 1995.

History: En. Sec. 2, Ch. 541, L. 1983; amd. Sec. 1, Ch. 39, L. 1985; amd. Sec. 16, Ch. 87, L. 1993.

60-3-218. Terminated. Secs. 4, 5, Ch. 456, L. 1995.

History: En. Sec. 3, Ch. 541, L. 1983; amd. Sec. 2, Ch. 39, L. 1985; amd. Sec. 17, Ch. 87, L. 1993.

Cross-References

Coal area highway reconstruction program, 90-6-210.

60-3-219. Allocation of funds — apportionment. The federal-aid highway funds allocated to the primary highway system for construction purposes must be apportioned among the five financial districts, corresponding to and congruent with the transportation commission districts established in 2-15-2502.

History: En. Sec. 5, Ch. 87, L. 1993; amd. Sec. 5, Ch. 75, L. 1995.

60-3-220 reserved.

60-3-221 through 60-3-234. Repealed. Sec. 1, Ch. 46, L. 1985.

Compiler's Comments

Histories of Repealed Sections:

60-3-221. En. 32-2615 by Sec. 1, Ch. 106, L. 1974; R.C.M. 1947, 32-2615; amd. Sec. 14, Ch. 23, L. 1979.

60-3-222. En. 32-2616 by Sec. 2, Ch. 106, L. 1974; R.C.M. 1947, 32-2616.

60-3-223. En. 32-2617 by Sec. 3, Ch. 106, L. 1974; R.C.M. 1947, 32-2617.

60-3-224. En. 32-2618 by Sec. 4, Ch. 106, L. 1974; amd. Sec. 7, Ch. 31, L. 1975; R.C.M. 1947, 32-2618.

60-3-225. En. 32-2619 by Sec. 5, Ch. 106, L. 1974; R.C.M. 1947, 32-2619; amd. Sec. 8, Ch. 22, L. 1981.

60-3-226 through 60-3-230 reserved.

60-3-231. En. 32-2620 by Sec. 1, Ch. 105, L. 1974; R.C.M. 1947, 32-2620; amd. Sec. 15, Ch. 23, L. 1979.

60-3-232. En. 32-2621 by Sec. 2, Ch. 105, L. 1974; R.C.M. 1947, 32-2621; amd. Sec. 16, Ch. 23, L. 1979.

60-3-233. En. 32-2622 by Sec. 3, Ch. 105, L. 1974; amd. Sec. 8, Ch. 31, L. 1975; R.C.M. 1947, 32-2622.

60-3-234. En. 32-2623 by Sec. 4, Ch. 105, L. 1974; amd. Sec. 9, Ch. 31, L. 1975; R.C.M. 1947, 32-2623; amd. Sec. 9, Ch. 22, L. 1981.

Part 3

Footpaths and Bicycle Trails

Part Cross-References

Bicycle defined, 61-1-123.

Traffic safety program, Title 61, ch. 2, part 1.

Traffic regulations, Title 61, ch. 8.

Bicycle traffic, Title 61, ch. 8, part 6.

Bicycles on sidewalks, 61-8-608.

Bicycle racing — when lawful, 61-8-609.

60-3-301. Short title. This part may be cited as the "Montana Footpath and Bicycle Trail Act of 1975".

History: En. 32-2624 by Sec. 1, Ch. 544, L. 1975; R.C.M. 1947, 32-2624; amd. Sec. 17, Ch. 23, L. 1979.

60-3-302. Bicycle trail defined. As used in this part, "bicycle trail" means a publicly owned and maintained lane or way designated and signed for use as a bicycle route.

History: En. 32-2625 by Sec. 2, Ch. 544, L. 1975; R.C.M. 1947, 32-2625.

60-3-303. Footpaths and bicycle trails to be established — funding. (1) The commission or a county or city, with funds received from the commission, may construct footpaths and bicycle trails. Footpaths and bicycle trails may be established and extended to the nearest city or town or termination point of the highway or road wherever a highway, road, or street is being constructed, reconstructed, or relocated. In addition, footpaths and bicycle trails may be established along all streets under state jurisdiction. Funds may also be expended to construct footpaths and bicycle trails along other highways, roads, and streets and in parks and recreation areas if the construction enhances traffic safety and convenience. Footpaths and bicycle trails may be constructed along all sections of the national defense interstate highway system.

(2) Footpaths and trails may not be established under subsection (1):

(a) if the cost of establishing the paths and trails is excessively disproportionate to the need or probable use; or

(b) if sparsity of population, other available ways, or other factors indicate an absence of any need for the paths and trails.

(3) The commission shall let to contract in any period of 5 consecutive fiscal years not less than an average of $200,000 each year for footpaths and bicycle trails. The department shall establish accounting procedures to document compliance with this subsection.

History: En. 32-2626 by Sec. 3, Ch. 544, L. 1975; R.C.M. 1947, 32-2626; amd. Sec. 18, Ch. 23, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 60, L. 1989; amd. Sec. 6, Ch. 75, L. 1995; amd. Sec. 1, Ch. 297, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 297 in (1) in first and fourth sentences deleted reference to funds received from the state transportation commission state special revenue fund; and made minor changes in style. Amendment effective July 1, 1999.

60-3-304. Duties of department of transportation. (1) The establishment of paths and trails and the expenditure of funds as authorized by this part are for the promotion of traffic safety on the highways, roads, and streets of the state. The transportation commission shall, when requested, provide technical assistance and advice to cities and counties in carrying out the purpose of this part.

(2) The department of transportation shall recommend construction standards for footpaths and bicycle trails. The department shall provide a uniform system of signing footpaths and bicycle trails which shall apply to paths and trails under the jurisdiction of the commission and cities and counties. The commission and cities and counties shall restrict the use of footpaths and bicycle trails under their jurisdiction to pedestrians and nonmotorized vehicles to the maximum possible extent, except that the commission, in cooperation with local governments, may authorize the operation of snowmobiles on designated portions of bicycle trails and footpaths when snow conditions permit.

History: En. 32-2627 by Sec. 4, Ch. 544, L. 1975; R.C.M. 1947, 32-2627; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 6, Ch. 75, L. 1995.

CHAPTER 4

ACQUISITION AND DISPOSITION OF PROPERTY

Part 1 — Acquisition of Property

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60-4-102. General power of department to acquire interests in property.
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60-4-205. Private sale if no bid or offer.
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(Repealed. Sec. 6, Ch. 374, L. 1989)

Part 4 — Relocation of Utilities

60-4-401. Relocation — definitions.
60-4-402. Relocation of utility facilities — rules.
60-4-403. Relocation — costs.

Chapter Cross-References

Duty to notify district weed board when proposed project will disturb land, 7-22-2152.

Availability of remedies — liability, Title 27, ch. 1.

State lands — transfers and reservations of property interests, Title 77, ch. 2.

Part 1

Acquisition of Property

Part Cross-References

Eminent domain, Art. II, sec. 29, Mont. Const.; Title 70, ch. 30.

Right to construct pipeline, 69-13-103, 69-13-104.

Owner of land bounded by road, 70-16-202.

Transfer of land bounded by highway — what passes, 70-20-307.

Local governments may acquire property, 76-5-1108.

Contracts for use of railroads and highways, 76-5-1109.

60-4-101. Rights acquired by public in highway. By taking or accepting land for a highway, the public may acquire either a fee simple or any lesser estate or interest.

History: En. Sec. 8-101, Ch. 197, L. 1965; R.C.M. 1947, 32-3901.

Cross-References

Classification of interests in real property, Title 70, ch. 15, part 2.

60-4-102. General power of department to acquire interests in property. Notwithstanding any other provision of law, the department of transportation may acquire by purchase or other lawful manner lands or other real property, excluding oil, gas, and mineral rights, which it considers reasonably necessary for present or future highway purposes. The department may acquire a fee simple or lesser estate or interest.

History: En. Sec. 8-102, Ch. 197, L. 1965; amd. Sec. 126, Ch. 316, L. 1974; R.C.M. 1947, 32-3902; amd. Sec. 3, Ch. 512, L. 1991.

60-4-103. Purposes for which property acquired. The acquisition of lands or other property or any interest therein for present or future highway purposes includes but is not limited to any of the following purposes:

(1) for rights-of-way, including those necessary for highways within cities;

(2) for exchanging lands or other property or any interest therein for other such lands or interests for rights-of-way or other authorized purposes. The right of eminent domain shall not be exercised for this purpose.

(3) for deposits of road building materials, including rock, gravel, sand, and earth, for reasonably foreseeable future road-building purposes and uses. The right of eminent domain shall not be exercised to acquire any such deposits which constitute a component part of an existing private business enterprise.

(4) for offices, weighing stations, shops, storage yards, buildings, rest areas, informational sites, or communication facilities;

(5) for parks adjoining or near any highway;

(6) for the culture and support of trees or shrubs which benefit any highway by aiding in the maintenance and preservation of the roadbed;

(7) for drainage in connection with any highway;

(8) for the maintenance of an unobstructed view of any portion of a highway so as to promote the safety of the traveling public;

(9) for the construction and maintenance of stock lanes or trails;

(10) for the construction and maintenance or replacement of private or public drainage systems or natural water or drainage courses made necessary by highway construction;

(11) for providing land or other real property easements or rights-of-way for necessary relocation of existing utilities, utility easements, or other easements for facilities or purposes then in place or in effect upon a proposed right-of-way.

History: En. Sec. 8-103, Ch. 197, L. 1965; R.C.M. 1947, 32-3903.

Cross-References

Public uses enumerated, 70-30-102.

60-4-104. Exercise of right of eminent domain — presumption. (1) Whenever the department cannot acquire lands or other property or interests in the lands or property at a price or cost which it considers reasonable, it may direct the attorney general or any county attorney to procure the interests by proceedings to be instituted as provided in Title 70, chapter 30, against all nonaccepting landholders.

(2) It shall not so direct the attorney general or any county attorney until it adopts an order declaring that:

(a) public interest and necessity require the construction or completion by the state of the highway or improvement for one of the purposes set forth in 60-4-103;

(b) the interest described in the order and sought to be condemned is necessary for the highway or improvement;

(c) the highway or improvement is planned and located in a manner which will be compatible with the greatest public good and the least private injury.

(3) The order creates and establishes a disputable presumption:

(a) of the public necessity of the proposed highway or improvement;

(b) that the taking of the interest sought is necessary therefor;

(c) that the proposed highway or improvement is planned or located in a manner which will be most compatible with the greatest public good and the least private injury.

History: En. Sec. 8-104, Ch. 197, L. 1965; amd. Sec. 127, Ch. 316, L. 1974; R.C.M. 1947, 32-3904.

Cross-References

Disputable presumptions, 26-1-602.

60-4-105. Acquisition of whole parcel — sale of excess. (1) Whenever any interest in a part of a parcel of land or other real property is to be acquired for highway purposes leaving the remainder in a shape or condition as to be of little market value or to give rise to claims or litigation over severance or other damage, the department may acquire the whole parcel. It may sell or exchange the remainder for other property needed for highway purposes.

(2) Whenever a part of a parcel of land acquired for highway purposes is in a shape or size as to come within the Montana Subdivision and Platting Act, the department shall prepare and file the required plat in the office of the county clerk and recorder.

History: En. Sec. 8-105, Ch. 197, L. 1965; amd. Sec. 128, Ch. 316, L. 1974; R.C.M. 1947, 32-3905; amd. Sec. 19, Ch. 23, L. 1979.

Cross-References

Montana Subdivision and Platting Act, Title 76, ch. 3.

60-4-106. Power to acquire for future. (1) The power conferred by this chapter to acquire interests in lands or other real property includes power to acquire for reasonably foreseeable future needs.

(2) The department may lease unused portions of lands or other real property which are held for highway purposes and interstate highway rights-of-way which are not presently needed for highway purposes on the terms and conditions which it decides. The department may repair, maintain, and care for the property in order to secure rent from it.

(3) All rent received shall be deposited to the credit of the department.

History: En. Sec. 8-106, Ch. 197, L. 1965; amd. Sec. 129, Ch. 316, L. 1974; R.C.M. 1947, 32-3906.

Cross-References

Weed control responsibility, 70-30-314.

Acquisition of buildings and improvements affected, 70-31-305.

60-4-107. Road-building materials. (1) A right-of-way or easement acquired by the department for construction, operation, repair, reconstruction, or maintenance of highways includes, among others, the right to use, remove, relocate, redistribute, or otherwise dispose of gravel and other road-building materials found or located within the boundaries of the right-of-way or easement.

(2) For the purposes of this chapter, the gravel or materials are considered to be real property and not minerals.

History: En. Sec. 8-107, Ch. 197, L. 1965; amd. Sec. 130, Ch. 316, L. 1974; R.C.M. 1947, 32-3907.

60-4-108. No compensation in certain cases — exceptions. (1) Whenever the department files a description and plan as provided in 60-2-209, no consideration, allowance, or assessment of values or compensation shall be made in the purchase or condemnation of buildings or improvements or subdivisions placed or erected on the land covered by the plan after the filing.

(2) The establishment of the highway location covered by the description and plan shall be ineffective 1 year after filing if no action to condemn or acquire the property has been commenced.

(3) Nothing in this section or in 60-2-209 applies to crops or similar improvements planted on the lands described. They are governed by 70-30-302.

History: En. Sec. 8-108, Ch. 197, L. 1965; amd. Sec. 131, Ch. 316, L. 1974; R.C.M. 1947, 32-3908.

Cross-References

Acquisition of buildings and improvements affected, 70-31-305.

60-4-109. Irrigable lands rendered unusable — unpaid construction costs. (1) Whenever the department acquires irrigable land for highway purposes or so acquires land as to render other irrigable land unusable for irrigation, it shall pay to the owner of the irrigation or drainage project, in addition to other sums allowed by law, a proportionate share of the unpaid construction costs of the project or drainage district.

(2) The department shall also pay a lump-sum amount to the district sufficient to produce, on an amortized basis for a reasonable period not to exceed 90 years, a sum of money equal to the annual increase in operation and maintenance costs against the remaining lands under irrigation in the district resulting from the severance from the district of the lands acquired by the department and not overcome by bringing new or additional land under irrigation. For the purpose of determining the amount of the lump-sum payment, the annual operation and maintenance assessment of the district shall be considered to be the average for the 5 years, or so many years as the district has assessment experience if less than 5 years, preceding the date of acquisition.

History: En. Sec. 8-116, Ch. 197, L. 1965; amd. Sec. 1, Ch. 299, L. 1969; amd. Sec. 139, Ch. 316, L. 1974; R.C.M. 1947, 32-3916.

Cross-References

Alteration and determination of irrigation district acreage, Title 85, ch. 7, part 18.

Irrigation districts — sale or transfer of lands, 85-7-2167.

60-4-110. Highway crossing railroad, canal, or ditch. (1) Whenever any federal-aid or state highway is laid out on public lands across any railroad, canal, or ditch, the owners or users thereof must, at their expense, so prepare the railroad, canal, or ditch that the highway may cross it without damage or delay.

(2) When the right to cross is obtained through the judgment of any court, no damages shall be awarded.

History: En. Sec. 8-118, Ch. 197, L. 1965; R.C.M. 1947, 32-3918.

Cross-References

Railroad highway crossings, Title 69, ch. 14, part 6.

Rights-of-way for irrigation works, 85-7-1909.

60-4-111. Acquisition of property for controlled-access facility. (1) The highway authorities of the state, counties, incorporated cities and towns, respectively, or in cooperation one with the other, may acquire private or public property and property rights for controlled-access highways or controlled-access facilities and service roads. Such rights may include rights of access, air, view, and light. They may be acquired by gift, devise, purchase, or condemnation, in the same manner as may now or hereafter be authorized by law for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions.

(2) A right-of-way is hereby given, dedicated, and set apart for controlled-access highways or controlled-access facilities through, over, upon, or across any county road and any street or alley intersecting a controlled-access highway. Acquisition of any county road, street, or alley for use as a controlled-access highway or controlled-access facility shall be deemed a superior and more necessary public use and purpose than the public use or purpose to which such road, street, or alley has theretofore been dedicated.

History: En. Sec. 8-120, Ch. 197, L. 1965; R.C.M. 1947, 32-3920.

Cross-References

Local government — acquisition of property for controlled-access facility, 7-14-101.

Controlled-access highway and controlled-access facility defined, 60-5-102.

Controlled-access highway defined, 61-1-211.

Part 2
Disposition of Property

Part Cross-References

Transfer of land bounded by highway — what passes, 70-20-307.

Sale of property acquired for public use when use abandoned — procedure, 70-30-321.

Transfers and reservations of property interests, Title 77, ch. 2.

60-4-201. Exchange of interest in real property. (1) The department may determine that an interest in real property, however acquired by it, is no longer necessary to the laying out, altering, construction, improvement, or maintenance of a highway. It may then exchange the interest, either as entire or partial consideration, for any other interest in real property needed for highway purposes. The department may establish the manner and terms and conditions for the exchange.

(2) The owner from whom the interest was originally acquired by the state or his successor in interest has the right to require the department to offer the land for sale in the manner set forth in 60-4-202 and 60-4-203. The department shall notify the owner or successor in interest of its intention to exchange the interest. The owner shall make his demand for sale by registered or certified mail to the department within 10 days after receipt of notice from the department.

History: En. Sec. 8-109, Ch. 197, L. 1965; amd. Sec. 132, Ch. 316, L. 1974; R.C.M. 1947, 32-3909.

Cross-References

Power to sell, lease, or exchange certain state lands, 77-1-204.

60-4-202. Sale of interest in real property. The department may sell an interest in real property if the department determines that the property is not necessary to the laying out, altering, construction, improvement, or maintenance of a highway. If the interest is reasonably of a value in excess of $2,500, sale must be made to the highest bidder at public auction. The sale of an interest at auction must be conducted as provided in 77-2-321.

History: En. Sec. 8-110, Ch. 197, L. 1965; amd. Sec. 133, Ch. 316, L. 1974; R.C.M. 1947, 32-3910; amd. Sec. 1, Ch. 305, L. 1981; amd. Sec. 1, Ch. 232, L. 1995.

60-4-203. Conduct of sale. (1) The department shall publish notice of the sale once a week for 4 successive weeks in a newspaper published in the county in which the interest is located. The notice of sale must contain the information required by 77-2-322. Sale must be held in the county where the property is located.

(2) Before the sale of an interest having a value in excess of $2,500, the department must have the interest appraised at a price representing a fair market value. The appraised value must be stated in the published notice.

(3) A sale of an interest may not be made unless it has been appraised within 3 months prior to the date of the sale. A sale may not be made for less than 90% of the appraised value.

(4) Title to an interest may not pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the department.

History: En. Sec. 8-111, Ch. 197, L. 1965; amd. Sec. 1, Ch. 21, L. 1974; amd. Sec. 134, Ch. 316, L. 1974; R.C.M. 1947, 32-3911; amd. Sec. 20, Ch. 23, L. 1979; amd. Sec. 2, Ch. 305, L. 1981; amd. Sec. 2, Ch. 232, L. 1995.

Cross-References

Transfer of real property, Title 70, ch. 20.

60-4-204. Repealed. Sec. 3, Ch. 232, L. 1995.

History: En. Sec. 8-112, Ch. 197, L. 1965; amd. Sec. 135, Ch. 316, L. 1974; R.C.M. 1947, 32-3912.

60-4-205. Private sale if no bid or offer. (1) If, after proper notice is published, the department receives neither bid at public sale nor offer from the original owner or his successor in interest, it may at any time thereafter sell the interest at private sale. At the sale, the department may accept as the purchase price an amount of money not less than 90% of the appraised value.

(2) Title to an interest may not pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the department.

History: En. Sec. 8-113, Ch. 197, L. 1965; amd. Sec. 136, Ch. 316, L. 1974; R.C.M. 1947, 32-3913; amd. Sec. 21, Ch. 23, L. 1979.

Cross-References

Effect of transfer, Title 70, ch. 20, part 3.

60-4-206. Sale of personal property and printed matter. (1) The department may sell at public or private sale, as it determines, an interest in personal property, however acquired by it, which it determines is not necessary to the laying out, altering, construction, improvement, or maintenance of a highway.

(2) The department may sell at public or private sale, as it determines, maps, books, pamphlets, or other printed matter prepared or acquired by the department. The department may sell copies of highway records to the public and may set reasonable prices for them.

(3) The proceeds from sales made under this section shall be paid into the state treasury to the credit of the department.

History: En. Sec. 8-114, Ch. 197, L. 1965; amd. Sec. 137, Ch. 316, L. 1974; R.C.M. 1947, 32-3914.

Cross-References

Public records management, Title 2, ch. 6, part 2.

Sale of highway equipment by bid, 18-6-103.

Duties of Department of Transportation, 60-2-202.

60-4-207. Conveyances — execution and contents. (1) Land or an interest in land sold by the department shall be conveyed only when full payment has been made for it. It shall be conveyed by a deed or patent of conveyance without covenants which recites that it was issued under this chapter.

(2) The deed or patent shall contain a reservation of easements for rights-of-way for the benefit of the United States and all other reservations to which the land conveyed may be subject.

(3) The deed or patent shall be signed by the governor or, in case of his absence or inability, the lieutenant governor. It shall be attested by the secretary of state and have attached the great seal of the state. It need not be acknowledged.

History: En. Sec. 8-115, Ch. 197, L. 1965; amd. Sec. 138, Ch. 316, L. 1974; R.C.M. 1947, 32-3915.

Cross-References

State lands — certificate of purchase, 77-2-327.

60-4-208. Abandonment or vacation of federal-aid or state highways. Every federal-aid or state highway once established must continue until abandoned or vacated by operation of law or by judgment of a court of competent jurisdiction or by a proper order of the commission.

History: En. Sec. 8-117, Ch. 197, L. 1965; R.C.M. 1947, 32-3917.

Cross-References

Abandonment or vacation of county roads, 7-14-2615.

60-4-209. Abandoned highway property — title vests in contiguous owner. (1) Upon abandonment by the state in the manner provided in subsection (2) of an interest in real property acquired for the purpose of establishment of a highway, the owner of contiguous real property or his successor in interest is vested with the abandoned interest to the extent provided in subsection (3).

(2) For the purposes of this section:

(a) a fee simple interest may be abandoned only by the proper order of the commission; and

(b) an interest of less than fee simple may be abandoned in the manner provided in subsection (2)(a), by operation of law, and by judgment of a court of competent jurisdiction.

(3) The interest acquired by the contiguous property owner under subsection (1) is the abandoned interest or portion of such interest:

(a) if there are different contiguous property owners on each side of the abandoned interest, bounded on one side by the contiguous property and on the remaining two opposite sides by lines following the shortest distance from the extreme ends of the contiguous property abutting upon the abandoned interest to the center of the abandoned interest; and

(b) if the owners of the contiguous property on each side of the abandoned interest are one and the same, bounded on two opposite sides by the contiguous properties and on the two remaining opposite sides by lines following the shortest distance from the extreme ends of the contiguous property on one side of the abandoned interest to the extreme ends of the contiguous property on the other side of the abandoned interest.

(4) For the purpose of this section, an interest in property abandoned by a proper order of the commission includes an interest in property that the commission determines to be unnecessary to the laying out, altering, construction, improvement, or maintenance of a highway, whether or not the commission determines to sell such interest.

(5) The interest acquired by a contiguous property owner under subsection (3) is conditioned upon the use of the property for agricultural or noncommercial purposes. If the property is used for commercial purposes or for purposes of future subdivision or other similar development, the property shall revert to the state for sale pursuant to this part. This restriction applies to all subsequent holders of title to the property.

History: En. Sec. 1, Ch. 423, L. 1983.

Cross-References

Sale of property acquired for public use when use abandoned — procedure, 70-30-321.

Reversion of lands to state, 77-2-314.

Part 3

Relocation of Displaced Persons (Repealed. Sec. 6, Ch. 374, L. 1989)

Part Compiler's Comments

Histories of Repealed Sections:

60-4-301. En. Sec. 3, Ch. 212, L. 1969; amd. Sec. 140, Ch. 316, L. 1974; R.C.M. 1947, 32-3923.

60-4-302. En. Sec. 4, Ch. 212, L. 1969; amd. Sec. 141, Ch. 316, L. 1974; R.C.M. 1947, 32-3924.

60-4-303. En. Sec. 5, Ch. 212, L. 1969; amd. Sec. 2, Ch. 426, L. 1971; amd. Sec. 142, Ch. 316, L. 1974; R.C.M. 1947, 32-3925(a), (b).

60-4-304. En. Sec. 5, Ch. 212, L. 1969; amd. Sec. 2, Ch. 426, L. 1971; amd. Sec. 142, Ch. 316, L. 1974; R.C.M. 1947, 32-3925(c).

60-4-305. En. Sec. 6, Ch. 212, L. 1969; amd. Sec. 3, Ch. 426, L. 1971; amd. Sec. 143, Ch. 316, L. 1974; R.C.M. 1947, 32-3926.

60-4-306. En. Sec. 7, Ch. 212, L. 1969; amd. Sec. 4, Ch. 426, L. 1971; amd. Sec. 144, Ch. 316, L. 1974; R.C.M. 1947, 32-3927.

60-4-307. En. Sec. 8, Ch. 212, L. 1969; amd. Sec. 145, Ch. 316, L. 1974; amd. Sec. 1, Ch. 143, L. 1977; R.C.M. 1947, 32-3928.

60-4-308. En. Sec. 9, Ch. 212, L. 1969; amd. Sec. 5, Ch. 426, L. 1971; amd. Sec. 146, Ch. 316, L. 1974; R.C.M. 1947, 32-3929.

60-4-309. En. Sec. 10, Ch. 212, L. 1969; amd. Sec. 147, Ch. 316, L. 1974; R.C.M. 1947, 32-3930.

60-4-310. En. Sec. 11, Ch. 212, L. 1969; amd. Sec. 148, Ch. 316, L. 1974; R.C.M. 1947, 32-3931.

Part 4
Relocation of Utilities

Part Cross-References

Utility lines and facilities, Title 69, ch. 4.

Relocation of overhead utility lines, Title 69, ch. 4, part 4.

60-4-401. Relocation — definitions. For the purposes of this part, unless otherwise indicated, terms are defined as follows:

(1) (a) "Cost of relocation" means the amount paid by the utility for material, labor, and equipment properly attributable to the relocation after deducting any increase in the value of the new facility and any salvage value derived from the old facility.

(b) "Cost of relocation" does not mean engineering costs for designing, locating, staking, inspecting, or any other incidental costs of engineering.

(2) "Facility" means a utility's tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances impacted by a project on a federal-aid system or state highway.

(3) "Federal-aid systems" includes the following, as defined in 60-2-125:

(a) national highway system;

(b) primary highway system;

(c) secondary highway system; and

(d) urban highway system.

(4) "State highway" means that term, as defined in 60-2-125.

(5) "Utility" includes publicly, privately, and cooperatively owned utilities.

History: En. Sec. 4-116, Ch. 197, L. 1965; R.C.M. 1947, 32-2416; amd. Sec. 22, Ch. 23, L. 1979; amd. Sec. 1, Ch. 231, L. 1995; amd. Sec. 1, Ch. 324, L. 1997.

60-4-402. Relocation of utility facilities — rules. Except as provided in 60-4-403(2) and (3), the department may adopt reasonable rules for the reimbursement to a utility for the costs of installation, construction, maintenance, repair, renewal, or relocation of facilities.

History: En. Sec. 4-114, Ch. 197, L. 1965; amd. Sec. 82, Ch. 316, L. 1974; R.C.M. 1947, 32-2414; amd. Sec. 2, Ch. 324, L. 1997.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Use of public right-of-way for utility lines and facilities, 69-4-101.

60-4-403. Relocation — costs. (1) Except as provided in subsections (2) and (3), 75% of all costs of relocation, dismantling, and removal must be paid by the department as a cost of federal-aid systems construction.

(2) The department shall pay for the entire cost of relocating a publicly owned water or sewer facility with 500 or fewer service connectors under the following conditions:

(a) the facility has had 500 or fewer subscribers during the entire year before the letting of the project contract; and

(b) the relocation is the result of state highway or federal-aid system construction.

(3) The department shall pay for 85% of all costs of relocating a publicly owned water or sewer facility with more than 500 but fewer than 1,000 service connectors, subject to the following conditions:

(a) the facility had more than 500 but fewer than 1,000 subscribers during the entire year before the letting of the project contract; and

(b) the relocation is the result of state highway or federal-aid highway system construction.

History: En. Sec. 4-115, Ch. 197, L. 1965; amd. Sec. 83, Ch. 316, L. 1974; R.C.M. 1947, 32-2415; amd. Sec. 2, Ch. 231, L. 1995; amd. Sec. 3, Ch. 324, L. 1997.

Cross-References

Costs of relocation, 69-4-404.

CHAPTER 5

CONTROL OF ACCESS AND INFORMATION SIGNS

Part 1 — Control of Access

60-5-101. Policy.
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60-5-104. Powers of highway authorities.
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60-5-515 through 60-5-518 reserved.
60-5-519. Tourist-oriented directional signs within right-of-way of primary highway system.
60-5-520. Tourist-oriented directional signs — number of business signs — distances.
60-5-521. Sign composition — design — conformity with standards and rules.
60-5-522. Business eligibility — criteria — restrictions.
60-5-523 through 60-5-525 reserved.
60-5-526. Restrictions.
60-5-527. Federal requirements — conflict and accord.

Chapter Cross-References

Acquisition of property for controlled-access facility, 7-14-101.

Traffic regulation, Title 61, ch. 8.

When authorities may restrict right to use roadway — perishable seed potato load restrictions, 61-10-128.

Aircraft landings and takeoffs on public roads, 67-1-204.

Part 1
Control of Access

Part Cross-References

Traffic-control devices, Title 61, ch. 8, part 2.

60-5-101. Policy. The legislature declares it to be the policy of this state to facilitate the flow of traffic and promote public safety by controlling access to:

(1) highways included by the federal highway administration in the national system of interstate highways;

(2) throughways and intersections with throughways;

(3) such other federal-aid and state highways as shall be designated by the commission in accordance with the requirements set forth in this chapter.

History: En. Sec. 10-101, Ch. 197, L. 1965; amd. Sec. 152, Ch. 316, L. 1974; R.C.M. 1947, 32-4301; amd. Sec. 23, Ch. 23, L. 1979.

60-5-102. Definitions. When used in this chapter, the following definitions apply:

(1) "Arterial highway" means a state highway designated by agreement between the commission and the secretary of transportation as part of the federal-aid primary system and any highway so designated as a part of the federal-aid secondary system which has been constructed and is being used primarily for through traffic on a continuous route.

(2) "Controlled-access facility" means and includes streets, alleys, public roads, private roads, and ways of passage intersecting a controlled-access highway and real property contiguous to the right-of-way of a controlled-access highway.

(3) "Controlled-access highway" means those portions of an interstate highway, throughway, or throughway intersection which the commission designates for through traffic or other federal-aid or state highway over, from, or to which owners or occupants of abutting land or other persons have no easement of access or only a limited easement of access, light, air, or view. It also means those portions of spurs to the interstate highway system which the commission designates as unsafe or impeded by unrestricted access of traffic from intersecting streets or alleys or public or private roads or ways of passage.

(4) "Existing highway" means and includes highways, roads, and streets established, constructed, and in use on March 2, 1955. It does not include highways, roads, or streets, established, constructed, and in use after that date or highways, roads, or streets, or portions thereof relocated after that date.

(5) "Highway authorities" or "authority" means the entities in state, county, and municipal governments which have authority to construct, repair, and maintain highways, roads, and streets.

(6) "Interstate highway" means a highway included as a part of the national system of interstate highways.

(7) "Throughway" means a portion of an arterial highway constructed and used for carrying traffic partially or entirely around a town or city or a portion thereof.

(8) "Throughway intersection area" means an area within a radius of 300 feet from the point of intersection of the centerlines of a throughway and a public road, street, or highway.

History: En. Sec. 10-102, Ch. 197, L. 1965; amd. Sec. 153, Ch. 316, L. 1974; R.C.M. 1947, 32-4302.

Cross-References

Through highway, 61-1-210.

Controlled-access highway, 61-1-211.

60-5-103. Designation as controlled-access highway. (1) No portion of any interstate highway, throughway or throughway intersection, or other federal-aid or state highway shall be designated as a controlled-access highway unless the commission shall adopt a resolution so designating it. The resolution shall be adopted by the majority vote of the members in attendance at any regular or special meeting. In it, the commission shall find and determine that it is necessary and desirable that:

(a) the owners or occupants of the abutting land or other persons shall have no easement of access or only a limited easement of access, light, air, or view;

(b) the rights of or easements to access, light, air, or view be acquired by the state so as to prevent such portion of highway from becoming unsafe for or impeded by unrestricted access of traffic from intersecting streets, alleys, public or private roads, or ways of passage.

(2) The resolution shall contain a statement of the reasons for its adoption and shall set forth the location, distance, and termini of the portion of the highway designated as a controlled-access highway.

History: En. Sec. 10-103, Ch. 197, L. 1965; amd. Sec. 1, Ch. 215, L. 1969; R.C.M. 1947, 32-4303.

60-5-104. Powers of highway authorities. (1) Those authorities of the state, counties, and municipalities authorized to participate in construction and maintenance of highways may plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide controlled-access facilities for public use. Each such authority shall by resolution make the findings and determinations provided for in 60-5-103.

(2) The highway authorities of the state, counties, incorporated cities, and towns, respectively, or in cooperation each with the other, may acquire private or public property and property rights for controlled-access highways or controlled-access facilities and service roads. Such rights may include rights of access, air, view, and light. They may be acquired by gift, devise, purchase, or condemnation, in the same manner as may now or hereafter be authorized by law for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions.

(3) Within incorporated cities and towns and upon county roads or secondary highways, the department of transportation shall not control access without the consent of the appropriate governing body.

(4) Each authority may also exercise with relation to controlled-access facilities any and all additional authority now or hereafter vested in it over

highways, roads, or streets within its respective jurisdiction. It may regulate, restrict, or prohibit the use of controlled-access facilities by any vehicles or traffic.

History: (1), (3), (4)En. Sec. 10-105, Ch. 197, L. 1965; amd. Sec. 1, Ch. 436, L. 1973; Sec. 32-4305, R.C.M. 1947; (2)En. Sec. 8-218, Ch. 197, L. 1965; Sec. 32-4018, R.C.M. 1947; R.C.M. 1947, 32-4018, 32-4305; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

General powers of county relating to roads and bridges, 7-14-2101.

Municipal authority to establish, alter, and maintain trafficways and public grounds, 7-14-4101.

General powers of Department, 60-2-201.

60-5-105. Design of controlled-access facility — entrance and exit restricted. (1) Each highway authority may so design any controlled-access facility and so regulate, restrict, or prohibit access as to best serve the traffic for which the facility is intended. In so doing, it may divide and separate any controlled-access facility into separate roadways by the construction of raised curbings, central dividing sections, or other physical separations or by designating the separate roadways by signs, markers, stripes, and other devices.

(2) No person shall have any right to enter upon, exit from, or cross any controlled-access facility except at designated points at which access may be permitted. Terms and conditions governing such access may be specified from time to time.

History: En. Sec. 10-106, Ch. 197, L. 1965; R.C.M. 1947, 32-4306.

Cross-References

Traffic-control devices, Title 61, ch. 8, part 2.

Restricted and controlled access, 61-8-331.

Restrictions on use of controlled-access roadway, 61-8-332.

60-5-106. Elimination of grade crossings. (1) Each highway authority may provide for elimination of intersections at grade of controlled-access highways or controlled-access facilities with existing federal-aid and state highways, county roads, and city or town streets. Elimination shall be accomplished at the boundary of the controlled-access right-of-way.

(2) After the establishment of any controlled-access highway or facility, no private or public highway or street which is not a part of the highway or facility shall intersect it at grade, except as may be provided in the resolution designating it a controlled-access highway or facility. No street, road, highway, or other public or private way shall be opened into or connected with any controlled-access highway or facility without the prior consent and approval of the appropriate highway authority which adopted the controlled-access resolution.

(3) The commission may, whenever it determines that the public safety is not thereby impaired, authorize the continued intersection at grade of lightly traveled farm entrances and minor public roads as ways of access to controlled-access highways in sparsely populated rural areas. The commission shall have sole jurisdiction to determine the existence and location of any intersection with interstate highways, throughways, and other federal-aid and state highways.

History: En. Sec. 10-107, Ch. 197, L. 1965; R.C.M. 1947, 32-4307; amd. Sec. 1, Ch. 40, L. 1979.

Cross-References

Establishment and change of street grade, Title 7, ch. 14, part 42.

60-5-107. Existing roads and streets as service roads. (1) In connection with the development of any controlled-access highway or facility, each highway authority may plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service roads and streets. Each authority may designate as local service roads and streets any existing road or street.

(2) Service roads and streets shall be of appropriate design. They shall be separated from the controlled-access highway or facility by means of all devices determined to be necessary to carry out the provisions of this chapter.

(3) Each authority shall exercise jurisdiction over service roads and streets in the same manner as is authorized over controlled-access highways or facilities.

History: En. Sec. 10-108, Ch. 197, L. 1965; R.C.M. 1947, 32-4308.

60-5-108. Maintenance of frontage roads. Frontage roads shall be maintained by the department of transportation.

History: En. Sec. 1, Ch. 90, L. 1965; amd. Sec. 154, Ch. 316, L. 1974; R.C.M. 1947, 32-4308.1; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Maintenance responsibility, 60-2-203.

60-5-109. Marking of controlled-access highway or facility with signs. Any controlled-access highway or facility and portions thereof shall be physically marked by signs indicating to drivers of vehicles the points at which they enter and leave a controlled-access area.

History: En. Sec. 10-109, Ch. 197, L. 1965; R.C.M. 1947, 32-4309.

Cross-References

Restricted and controlled access, 61-8-331.

60-5-110. Commercial enterprise or structure prohibited — exception. Except as provided in 60-5-505, no commercial enterprise or structure shall be constructed or operated on the publicly owned right-of-way of a controlled-access highway or facility or on any publicly leased land used in connection therewith.

History: En. Sec. 10-110, Ch. 197, L. 1965; R.C.M. 1947, 32-4310; amd. Sec. 18, Ch. 537, L. 1989.

Cross-References

Use of public right-of-way for utility lines and facilities, 69-4-101.

60-5-111. Violations — penalties. (1) On any controlled-access highway or facility, it is unlawful for any person to construct, operate, or maintain any road or private driveway connecting with the highway or facility without first obtaining permission in writing from the highway authority having jurisdiction and, with the exception of an interstate highway, from the local governing body.

(2) Any person who violates any of the provisions of this section is guilty of a misdemeanor. Upon arrest and conviction therefor, he shall be punished by a fine of not less than $5 or more than $100 or by imprisonment in the city or county jail for not less than 5 days or more than 90 days or by both fine and imprisonment.

History: **En. Sec. 10-111, Ch. 197, L. 1965; R.C.M. 1947, 32-4311(1), (1)(e), (2).**

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Parts 2 through 4 reserved

Part 5

Information Signs

Part Cross-References

Beauty of state, Preamble, Mont. Const.

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Roadside historical signs, 15-65-121.

General provisions — Department of Transportation, Title 60, ch. 2, part 2.

Signs identifying mountain ranges, 60-2-217.

Welcome and farewell signs, 60-2-218.

Commercial enterprise or structure prohibited on highway — exception, 60-5-110.

Outdoor advertising, Title 75, ch. 15, part 1.

60-5-501. Purpose. It is the purpose of this part to provide for the installation of motorist information signs giving specific information of interest to the traveling public regarding motorist services that are conveniently accessible from the interstate and primary highways within the state.

History: **En. Sec. 1, Ch. 537, L. 1989.**

60-5-502. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Business sign" means a separately attached sign mounted on a motorist information sign panel to show the brand, symbol, trademark, or name, or combination of these, for a motorist service available on a crossroad at or near an interchange or intersection.

(2) "Crossroad" means a marked route or other public road intersecting a freeway or divided highway for which access is provided at an interchange or intersection.

(3) "Department" means the department of transportation provided for in 2-15-2501.

(4) "Franchisee" means a person awarded a franchise as provided in 60-5-505.

(5) "Motorist information sign" means a rectangular sign panel located in the same manner as other official traffic signs, readable from the main traveled way, and that is a:

(a) specific information sign; or

(b) tourist-oriented directional sign.

(6) "Motorist service" means gas, food, lodging, camping, recreation, and other tourist services.

(7) "Specific information sign" means a motorist information sign that is located on the interstate highway system and that contains:

(a) the words "GAS", "FOOD", "LODGING", or "CAMPING";

(b) directional information; and

(c) one or more individual business signs.

(8) "Tourist-oriented directional sign" means a motorist information sign located on the primary highway system to provide:

(a) business identification; and

(b) directional information for businesses, services, and activities of interest to tourists.

History: En. Sec. 2, Ch. 537, L. 1989; amd. Sec. 3, Ch. 512, L. 1991.

60-5-503. Rulemaking authority. The department may adopt rules necessary to implement the provisions of 60-5-501, 60-5-502, 60-5-504, 60-5-505, 60-5-509 through 60-5-514, and 60-5-519 through 60-5-522.

History: En. Sec. 15, Ch. 537, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

60-5-504. Motorist information sign program — department. There is a motorist information sign program to be operated by a franchisee under the general supervision and control of the department.

History: En. Sec. 11, Ch. 537, L. 1989.

60-5-505. Franchises. (1) The department may grant a franchise by public negotiation or bid to qualified persons to establish and operate the motorist information sign program authorized under 60-5-504.

(2) A franchisee shall furnish, install, maintain, and replace motorist information signs for the benefit of businesses that provide motorist services for the general public and may lease space on the signs to eligible businesses.

(3) A franchisee shall comply with the provisions of 60-5-501, 60-5-502, 60-5-511 through 60-5-514, and 60-5-519 through 60-5-522 and any other applicable state and federal laws and regulations.

History: En. Sec. 12, Ch. 537, L. 1989.

Cross-References

Commercial enterprise or structure prohibited — exception, 60-5-110.

60-5-506 through 60-5-508 reserved.

60-5-509. Contract requirements. All contracts made between the department and a franchisee must provide for:

(1) a requirement that the franchisee obtain liability insurance in an amount sufficient to jointly insure the state and the franchisee against all liability for claims for damages occurring wholly or in part because of the franchisee; and

(2) the standards for the size, design, erection, and maintenance that were adopted under 60-5-503.

History: En. Sec. 13, Ch. 537, L. 1989.

60-5-510. Costs. The department shall authorize reasonable fees to cover all costs incurred under the motorist information sign program. Fees must be paid under agreements negotiated between a franchisee and an advertiser unless otherwise provided in the contract between the department and the franchisee.

History: En. Sec. 14, Ch. 537, L. 1989.

60-5-511. Specific information signs within right-of-way of interstate highway system. Specific information signs may be erected and maintained within the right-of-way of the interstate highway system to give the traveling public specific information as to motorist services available on a crossroad at or near an interchange.

History: **En. Sec. 3, Ch. 537, L. 1989.**

Cross-References

Outdoor advertising prohibited — exceptions, 75-15-111.

60-5-512. Specific information signs — number of business signs — distances. (1) The number of specific information signs permitted is limited to one for each type of motorist service along an approach to an interchange or intersection.

(2) More than six business signs may not be displayed on a "GAS", "FOOD", "LODGING", or "CAMPING" specific information sign. Except as provided in subsection (3), a business may not be allowed more than one business sign on the same specific information sign.

(3) In areas where there are not more than four qualified businesses available for each of two or more types of motorist services, business signs for two types of services may be displayed by a business on the same specific information sign. More than four business signs for each type of service may not be displayed in combination on a specific information sign.

(4) To qualify for business identification on a specific information sign, a motorist service facility shall meet the eligibility criteria established in 60-5-514 and may not be located more than 3 miles from the interstate highway. However, if eligible services are not located within the 3-mile limit, the distance limits may be increased in 3-mile increments until either an eligible service or 15 miles is reached.

History: **En. Sec. 4, Ch. 537, L. 1989; amd. Sec. 1, Ch. 260, L. 1993; amd. Sec. 1, Ch. 281, L. 1997.**

60-5-513. Sign composition — spacing — conformity with laws. (1) A specific information sign panel must have a blue background with a white reflectorized border. The panels may be illuminated subject to regulation by the department.

(2) A business sign must have a blue background with a white legend unless other requirements are established by the department. Nationally, regionally, or locally known commercial symbols, brands, or trademarks for service stations, restaurants, campgrounds, and motels must be used when applicable. The symbol, brand, or trademark used on the business sign must be reproduced in the colors and general shape consistent with customary use. Messages, symbols, brands, or trademarks that interfere with or resemble any official warning or regulatory traffic sign, signal, or device are prohibited.

(3) Specific information signs are permitted only at locations where there is adequate distance between interchanges in compliance with the Manual on Uniform Traffic Control Devices, as amended.

(4) The spacing between two specific information sign panels and between specific information sign panels and official traffic control signs must be in accordance with the Manual on Uniform Traffic Control Devices. If there is insufficient space for both official traffic control signs and specific information signs, the official traffic control signs must be installed.

(5) The erection and maintenance of specific information signs must conform to national standards promulgated by the secretary of the U.S. department of transportation pursuant to 23 U.S.C. 131 and 23 U.S.C. 315 and rules adopted by the department under 60-5-503.

History: En. Sec. 5, Ch. 537, L. 1989.

60-5-514. Business eligibility — criteria — restrictions. (1) To be eligible for placement of a business sign on a specific information sign panel, a business establishment shall meet standards for "GAS", "FOOD", "LODGING", and "CAMPING" services in rules adopted by the department pursuant to guidelines in the Manual on Uniform Traffic Control Devices, as amended.

(2) (a) Each business identified on a specific information sign shall provide assurance of its conformity with all applicable laws concerning the provision of public accommodations without regard to race, color, sex, culture, social origin or condition, or political or religious ideas.

(b) If such a business violates any of these laws, it loses eligibility for business identification on a specific information sign.

(3) No business that owns any outdoor advertising structure in violation of the provisions of Title 75, chapter 15, part 1, may be eligible for business identification on a specific information sign for 1 year after the illegal outdoor advertising structure is removed unless the owner voluntarily removes it within 45 days of receiving notification under 75-15-131.

History: En. Sec. 6, Ch. 537, L. 1989.

60-5-515 through 60-5-518 reserved.

60-5-519. Tourist-oriented directional signs within right-of-way of primary highway system. (1) Tourist-oriented directional signs may be erected and maintained within the right-of-way of the primary highway system to provide information to the traveling public concerning motorist services accessible from the primary highway system by way of an intersecting highway.

(2) Except as provided by rule, a tourist-oriented directional sign may not be erected if the place of business is readily visible from the main-traveled roadway.

History: En. Sec. 7, Ch. 537, L. 1989.

Cross-References

Outdoor advertising prohibited — exceptions, 75-15-111.

60-5-520. Tourist-oriented directional signs — number of business signs — distances. (1) The number of tourist-oriented directional signs is limited to three signs on an approach to an intersection.

(2) No more than four business signs may be installed on a tourist-oriented directional sign.

(3) To qualify for business identification on a tourist-oriented sign, a business shall meet the eligibility criteria established in 60-5-522 and may not be located more than 5 miles from the primary highway, except as otherwise permitted by the department if no eligible business is located within the 5-mile limit.

History: En. Sec. 8, Ch. 537, L. 1989.

60-5-521. Sign composition — design — conformity with standards and rules. (1) A tourist-oriented directional sign must be rectangular in shape and must have a white legend and border on a blue background.

(2) A tourist-oriented directional sign may contain standard general service symbols to indicate a class of business, service, or activity.

(3) Business signs for specific businesses, services, and activities may be installed on a tourist-oriented directional sign. Nationally, regionally, or locally known commercial symbols, brands, or trademarks for service stations, restaurants, campgrounds, and motels must be used when applicable. Such commercial symbols, brands, and trademarks must be reduced to an appropriate size. No business sign may resemble any official warning or regulatory traffic sign, signal, or device.

(4) A tourist-oriented directional sign may contain no more than two lines of legend, including no more than one business sign, a separate directional arrow, and the distance to the specific business, service, or activity.

(5) The content of the legend must be limited to the identification of the business, service, or activity. The legend may not include promotional advertising.

(6) The legends, arrows, and business signs displayed on a tourist-oriented directional sign may be reflectorized.

(7) The erection and maintenance of tourist-oriented directional signs must conform to national standards promulgated by the U.S. secretary of transportation pursuant to 23 U.S.C. 131 and 23 U.S.C. 315 and rules adopted by the department under 60-5-503.

History: En. Sec. 9, Ch. 537, L. 1989.

60-5-522. Business eligibility — criteria — restrictions. (1) To be eligible for business identification on a tourist-oriented directional sign, a business establishment shall meet the following standards for a business, service, or activity:

(a) Gas, food, lodging, and camping services must:

(i) be licensed and approved by the state and local agencies regulating the particular type of business;

(ii) provide an acceptable level of service to the public;

(iii) be in continuous operation at least 8 hours a day, 5 days a week, including Saturday or Sunday; and

(iv) have a telephone and restroom facilities available for public use.

(b) Recreation services must:

(i) be licensed and approved by state and local agencies as required by law;

(ii) provide to families and the public activities of interest in which people participate for purposes of physical exercise, collective amusement, or enjoyment of nature. Such activities may include hiking, golfing, skiing, boating, swimming, picnicking, fishing, and horseback riding.

(c) Tourist services must:

(i) be licensed as required by law;

(ii) be open to the public at least 8 hours a day, 5 days a week, including Saturday or Sunday, during the normal tourist season; and

(iii) provide a natural, recreational, historical, cultural, educational, or entertainment activity or a unique or unusual commercial or nonprofit activity, from which the major portion of income or visitors is derived during normal business seasons from motorists not residing in the immediate area of the activity.

(2) Priority under subsection (1)(a) must be given to businesses that are in continuous operation for 12 months a year.

(3) (a) Each business identified on a tourist-oriented directional sign shall provide assurance of its conformity with all applicable laws concerning the provision of public accommodations without regard to race, color, sex, culture, social origin or condition, or political or religious ideas.

(b) If a business violates any of these laws, it loses eligibility for business identification on a tourist-oriented directional sign.

(4) A business that owns any outdoor advertising structure in violation of the provisions of Title 75, chapter 15, part 1, may not be eligible for business identification on a tourist-oriented directional sign for 1 year after the illegal outdoor advertising structure is removed unless the owner voluntarily removes it within 45 days of receiving notification under 75-15-131.

History: En. Sec. 10, Ch. 537, L. 1989; amd. Sec. 2, Ch. 260, L. 1993.

60-5-523 through 60-5-525 reserved.

60-5-526. Restrictions. The department may take no action under this part that may result in the loss to the state of any federal highway construction funds.

History: En. Sec. 16, Ch. 537, L. 1989.

60-5-527. Federal requirements — conflict and accord. If the secretary of the U.S. department of transportation finds any part of this part to be in conflict with federal requirements that are prescribed as a condition to the allocation of federal funds to the state, the conflicting part of this part is invalid only to the extent of the conflict and such finding may not affect the operation of the remainder of this part in its valid applications.

History: En. Sec. 17, Ch. 537, L. 1989.

CHAPTER 6

HIGHWAY ENCROACHMENTS

Part 1 — Removal of Encroachments by State Authorities

60-6-101. Highway encroachments — immediate removal.
60-6-102. Notice of encroachment.
60-6-103. Time limit for removal — penalty.
60-6-104. Denial of encroachment — department action.
60-6-105. Removal at owner's expense when not denied.

Chapter Cross-References

Power to construct works across roads and other obstacles, 7-13-2219.

Right-of-way across state lands, 7-13-2220.

Powers of rural cooperative utilities, 35-18-106.

Roadblocks, Title 46, ch. 5, part 5.

Removal of unauthorized signs, 61-8-706.

Use of public right-of-way for utility lines and facilities, 69-4-101.

Right to construct pipelines across highway, 69-13-103, 69-13-104.

Railroad crossings of roads and streams, 69-14-535.

Railroad highway crossings, Title 69, ch. 14, part 6.

Outdoor Advertising Act, Title 75, ch. 15, part 1.

Reduction of slash and debris along right-of-way, 76-13-407.

Part 1

Removal of Encroachments by State Authorities

60-6-101. Highway encroachments — immediate removal. (1) If any highway under the jurisdiction of the transportation commission is encroached upon by a fence, building, structure, sign, marker, mailbox, newspaper delivery box, or other obstruction, the department of transportation may give notice in writing to the person erecting or maintaining such encroachment requiring the same to be removed.

(2) The department shall adopt rules pertaining to the accommodation of mailboxes and newspaper delivery boxes on public highway rights-of-way. The rules must ensure that the location and construction of mailboxes and newspaper delivery boxes conform to the rules and regulations of the U.S. postal service.

(3) If the encroachment obstructs and prevents the use of the highway for vehicles, the department may immediately remove the same without the notice required by 60-6-102.

History: En. 32-4411 by Sec. 1, Ch. 231, L. 1975; R.C.M. 1947, 32-4411; amd. Sec. 1, Ch. 287, L. 1991; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 6, Ch. 75, L. 1995.

Cross-References

Notice — actual and constructive, 1-1-217.

Display of unauthorized signs, signals, or markings, 61-8-210.

60-6-102. Notice of encroachment. (1) Notice to remove the encroachment, specifying the width of the highway right-of-way and the place and extent of the encroachment, must be given to the person erecting or maintaining such encroachment.

(2) Notice must be given in the following manner:

(a) in writing by certified mail sent to the person's business or personal address or by personal service;

(b) if such address cannot be found, by posting it on the encroachment.

History: En. 32-4412 by Sec. 2, Ch. 231, L. 1975; R.C.M. 1947, 32-4412.

Cross-References

Civil procedure — notice defined, 25-3-101.

Right-of-way defined, 60-1-103.

60-6-103. Time limit for removal — penalty. If the encroachment is not permanently affixed to the land, such encroachment shall be removed from the right-of-way within 2 days after receipt of the notice. If such an encroachment remains on the right-of-way after this period of time, the person who causes, owns, or controls the encroachment shall be liable for the cost of such removal.

History: En. 32-4413 by Sec. 3, Ch. 231, L. 1975; R.C.M. 1947, 32-4413.

60-6-104. Denial of encroachment — department action. If the encroachment is denied, the department shall commence appropriate legal action to have said encroachment removed. If the department recovers a judgment, it shall have its costs. If the encroachment is not removed within 5 days after entry of judgment, the department may remove it at the expense of the person who causes, owns, or controls it.

History: En. 32-4414 by Sec. 4, Ch. 231, L. 1975; R.C.M. 1947, 32-4414(1).

Cross-References

Civil procedure — costs, Title 25, ch. 10.

60-6-105. Removal at owner's expense when not denied. If an encroachment affixed to the land is not denied and is not removed within 5 days after receipt of the notice, the department may remove it at the expense of the person who causes, owns, or controls it. The department may recover the expense of removal and costs in an action brought for that purpose.

History: En. 32-4414 by Sec. 4, Ch. 231, L. 1975; R.C.M. 1947, 32-4414(2).

Cross-References

Civil procedure — costs, Title 25, ch. 10.

CHAPTER 7

LIVESTOCK ON HIGHWAYS

Part 1 — Fencing of Open Range

60-7-101. Purpose.
60-7-102. Definitions.
60-7-103. Department to fence right-of-way through open range.

Part 2 — Grazing of Livestock on Highways

60-7-201. Grazing livestock on highway unlawful.
60-7-202. Exclusions.
60-7-203. Penalty.
60-7-204. Flagmen escorts — prohibitions against nighttime herding on public highways.
60-7-205. Violations.

Chapter Cross-References

Containment of livestock, Title 81, ch. 4.

Part 1

Fencing of Open Range

Part Cross-References

Open range defined, 81-4-203.

60-7-101. Purpose. It is the purpose of 60-7-101 through 60-7-103 to balance the tradition of the open range and the economic and geographic problems of raising livestock with the need for safer highways and the policy of taking all feasible measures to reduce the high incidence of traffic accidents and fatalities on Montana highways.

History: En. 32-2425.1 by Sec. 1, Ch. 255, L. 1974; R.C.M. 1947, 32-2425.1.

60-7-102. Definitions. As used in 60-2-208 and 60-7-101 through 60-7-103, the following definitions apply:

(1) A "high-hazard area" is a segment of the primary highway system passing through open range where livestock moves on or across the highway often enough, in enough numbers, and with enough ease of access that such animals create a significant traffic safety hazard. Evidence bearing on whether animals on the highway pose a significant hazard includes, without limitation, past accident records, the opinions of persons qualified by experience to evaluate the relative safety of road conditions, and the terrain around the road.

(2) "Livestock" means cattle, sheep, swine, horses, mules, and goats.

(3) A "low-hazard area" is a segment of the primary highway system passing through open range which is not a high-hazard area.

(4) "Open range" means those areas of the state where livestock is raised and maintained in sufficient numbers as to constitute a significant part of the local or county economy and where such animals graze and move about generally unrestrained by fences.

History: **En. Sec. 1, Ch. 311, L. 1969; amd. Sec. 2, Ch. 255, L. 1974; amd. Sec. 91, Ch. 316, L. 1974; R.C.M. 1947, 32-2426(2).**

60-7-103. Department to fence right-of-way through open range. (1) The department shall fence the right-of-way of any part of the state highway system that is constructed or reconstructed after July 1, 1969, through open range where livestock present a hazard to the safety of the motorist. Where a fence is constructed, adequate stock gates or stock passes, as necessary, shall be provided to make land on either side of the highway usable for livestock purposes.

(2) The department shall erect a fence in every high-hazard area as promptly as possible, and the cost of such construction is an expenditure for the enforcement of federal-aid highway safety programs. Gates, stock underpasses, water facilities, and cattle guards may be installed where necessary to make the land on either side of the highway usable for livestock purposes or where a public right-of-way intersects the state highway.

History: **(1)En. Sec. 1, Ch. 311, L. 1969; amd. Sec. 2, Ch. 255, L. 1974; amd. Sec. 91, Ch. 316, L. 1974; Sec. 32-2426, R.C.M. 1947; (2)En. 32-2429 by Sec. 5, Ch. 255, L. 1974; Sec. 32-2429, R.C.M. 1947; R.C.M. 1947, 32-2426(1), 32-2429.**

Cross-References

Right-of-way defined, 60-1-103.

Legal fence defined, 81-4-101.

Construction of auto pass not to deprive legal fence of character, 81-4-102.

Part 2
Grazing of Livestock on Highways

60-7-201. Grazing livestock on highway unlawful. A person who owns or possesses livestock may not permit the livestock to graze, remain upon, or occupy a part of the right-of-way of:

(1) a state highway running through cultivated areas or a part of the fenced right-of-way of a state highway if in either case the highway has been designated by agreement between the transportation commission and the secretary of transportation as a part of the national system of interstate and defense highways; or

(2) a state highway designated by agreement between the transportation commission and the secretary of transportation as a part of the federal-aid primary system, except as provided in 60-7-202.

History: **En. Sec. 1, Ch. 95, L. 1951; amd. Sec. 1, Ch. 186, L. 1961; Sec. 32-1018, R.C.M. 1947; amd. and redes. 32-21-176 by Sec. 7, Ch. 316, L. 1974; R.C.M. 1947, 32-21-176; amd. Sec. 6, Ch. 75, L. 1995.**

Cross-References

Federal-aid highway systems defined, 60-1-103.

60-7-202. Exclusions. Section 60-7-201 does not apply to the following:

(1) livestock on state highways under the charge of one or more herders;

(2) the parts of fenced highways adjacent to open range where a highway device has not been installed to exclude range livestock;

(3) the parts of a state highway or a part of the federal-aid primary system which the department of transportation designates as being impracticable to exclude livestock. These portions of the highway shall be marked by proper signs in accordance with the department's manual and specifications for a uniform system of traffic-control devices.

History: En. Sec. 2, Ch. 95, L. 1951; amd. Sec. 2, Ch. 186, L. 1961; Sec. 32-1019, R.C.M. 1947; amd. and redes. 32-21-177 by Sec. 8, Ch. 316, L. 1974; R.C.M. 1947, 32-21-177; amd. Sec. 24, Ch. 23, L. 1979; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Traffic-control devices, Title 61, ch. 8, part 2.

60-7-203. Penalty. A person who violates 60-7-201 is guilty of a misdemeanor and is subject to a fine of not less than $5 or more than $100 for each offense. In a civil action for damages caused by collision between a motor vehicle and a domestic animal or animals on a highway brought by the owner, driver, or occupant of a motor vehicle or by their personal representatives or assigns or by the owner of livestock, there is no presumption or inference that the collision was due to negligence on the part of the owner or the person in possession of the livestock or the driver or owner of the vehicle.

History: En. Sec. 3, Ch. 95, L. 1951; amd. Sec. 3, Ch. 186, L. 1961; Sec. 32-1020, R.C.M. 1947; amd. and redes. 32-21-178 by Sec. 9, Ch. 316, L. 1974; R.C.M. 1947, 32-21-178.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Uniform Accident Reporting Act, Title 61, ch. 7, part 1.

60-7-204. Flagmen escorts — prohibitions against nighttime herding on public highways. A person who owns, controls, or possesses livestock may not herd or drive a herd of livestock numbering more than 10 on an interstate or state primary highway designated as such by the transportation commission unless the livestock is preceded and followed by flagmen escorts for the purpose of warning other highway users. Livestock may not be herded or driven on an interstate or state primary highway during nighttime, as that term is defined in 1-1-301, except in a case of emergency. In the case of an emergency during the nighttime, the flagmen escorts shall use adequate warning lights, such as but not limited to portable lamps, lanterns, or rotating beacons. This section does not apply during daytime at posted livestock crossings on highways.

History: En. Sec. 1, Ch. 90, L. 1967; Sec. 32-1021, R.C.M. 1947; amd. and redes. 32-21-179 by Sec. 10, Ch. 316, L. 1974; R.C.M. 1947, 32-21-179; amd. Sec. 6, Ch. 75, L. 1995.

Cross-References

Flag person defined, 61-1-411.

Flag vehicle defined, 61-1-412.

60-7-205. Violations. A person who violates 60-7-204 is guilty of a misdemeanor.

History: En. Sec. 2, Ch. 90, L. 1967; Sec. 32-1022, R.C.M. 1947; amd. and redes. 32-21-180 by Sec. 11, Ch. 316, L. 1974; R.C.M. 1947, 32-21-180.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

When no penalty specified, 46-18-212.

CHAPTERS 8 THROUGH 10

RESERVED

CHAPTER 11

RAIL TRANSPORTATION

Part 1 — General Provisions

60-11-101. Rail planning.
60-11-102 through 60-11-109 reserved.
60-11-110. Abandonment defined.
60-11-111. Identification and acquisition of railroad rights-of-way — identification of railroad lines for rehabilitation.
60-11-112. Definitions.
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60-11-120. Railroad and intermodal transportation facility loans and grants — authorization — eligibility.
60-11-121. Legislative findings.
60-11-122. Repealed.
60-11-123. Disposition of revenue from state-owned railroads — use of money.

Part 2 — Rail Passenger Service

60-11-201. Agreements for rail passenger service application.

Parts 3 through 10 reserved

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60-11-1101. Intent.
60-11-1102. Definitions.
60-11-1103. Railroad rehabilitation revenue bonds.
60-11-1104. Bond details.
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60-11-1106. Bond covenants.
60-11-1107. Bond accounts — appropriation.
60-11-1108. Financial administration.
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60-11-1110. Tax exemption.
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60-11-1112. Loan details.
60-11-1113. Administration of loans.

Part 12 — Rolling Stock Revenue Bonds

60-11-1201. Intent.
60-11-1202. Definitions.
60-11-1203. Railroad rolling stock revenue bonds.
60-11-1204. Bond details.
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60-11-1209. Refunding bonds.
60-11-1210. Tax exemption.
60-11-1211. Use of bond proceeds.
60-11-1212. Loan details.

60-11-1213. Administration of loans.

Chapter Cross-References

Railroads, Title 69, ch. 14.

Coal impacts — newly constructed railroad serving coal mine, 90-6-207.

Part 1
General Provisions

60-11-101. Rail planning. The department of transportation may administer rail planning activities.

History: En. Sec. 1, Ch. 324, L. 1979; amd. Sec. 16, Ch. 274, L. 1981; amd. Sec. 6, Ch. 512, L. 1991.

Cross-References

Public transportation issues — Department of Transportation to represent state, 60-21-101.

60-11-102 through 60-11-109 reserved.

60-11-110. Abandonment defined. For purposes of this part, "abandonment" means the relinquishment of property, both real and personal, and the discontinuance of railroad services. Abandonment may be accomplished by voluntary act or by formal procedure.

History: En. Sec. 1, Ch. 591, L. 1987.

Cross-References

Privilege tax on gainful use of tax-exempt property — exception for state-acquired railroad property, 15-24-1203.

Duty to furnish shipping and passenger facilities, 69-14-202.

Sale or transfer of railroad line, Title 69, ch. 14, part 11.

60-11-111. Identification and acquisition of railroad rights-of-way — identification of railroad lines for rehabilitation. (1) Identification of those railroad lines proposed for abandonment in the state of Montana that may have potential for local transportation service or future use as transportation corridors is necessary to determine the feasibility of acquisition by the state and to allow the state to negotiate for acquisition of those railroad lines or easements in the lines.

(2) Identification of those railroad branch lines in the state that may have potential for local rail freight transportation service is necessary to determine the feasibility of providing loans or grants to the owner or operator of the railroad line as provided in 60-11-120.

(3) The department of transportation:

(a) shall identify railroad rights-of-way in this state that may be abandoned and research the feasibility of acquisition by the state of Montana of those rights-of-way that may be abandoned;

(b) shall identify, under the state rail planning program, railroad branch lines that should be preserved for continued operation;

(c) may negotiate for and acquire easements in the rights-of-way or the railroad rights-of-way and attendant facilities identified pursuant to subsection (3)(a) and:

(i) hold all acquired lands in trust for transportation purposes; and

(ii) upon creation of an appropriate local authority, other than an agency of state government, shall transfer to the local authority all attendant facilities and all rights and responsibility to operate and maintain transportation services over the lands acquired in subsection (3)(c);

(d) shall cooperate with and assist persons representing recreational, transportation, and utility interests and other interested persons, including adjacent landowners, in acquiring ownership or easement of abandoned railbeds; and

(e) shall establish procedures, including the use of federal funds received for rail freight assistance programs under 49 U.S.C. 1654, for providing loans and grants under 60-11-120.

(4) Abandoned rights-of-way acquired and held in trust pursuant to subsection (3)(c)(i) must be administered by the department of natural resources and conservation, as prescribed in Title 77, until the land is needed for transportation purposes.

History: En. Secs. 1, 2, Ch. 653, L. 1983; amd. Sec. 1, Ch. 564, L. 1985; amd. Sec. 2, Ch. 509, L. 1991; amd. Sec. 6, Ch. 512, L. 1991; amd. Sec. 1, Ch. 541, L. 1993; amd. Sec. 171, Ch. 418, L. 1995; amd. Sec. 66, Ch. 545, L. 1995.

Cross-References

Department of Commerce established, 2-15-1801.

60-11-112. Definitions. As used in 60-11-111, the following definitions apply:

(1) "Railbed" means the fee or lessor interest in the land 8.5 feet to either side of the centerline of the railroad track.

(2) "Recreational interest" means a local government or a not-for-profit corporation that has as its stated purpose the development, use, or maintenance of public recreational trails.

History: En. Sec. 1, Ch. 509, L. 1991.

60-11-113 through 60-11-119 reserved.

60-11-120. Railroad and intermodal transportation facility loans and grants — authorization — eligibility. (1) Money appropriated by the legislature may be used by the department of transportation, after deducting the necessary costs and expenses for administering this section, to provide loans and grants for the preservation and continued operation of railroad branch lines identified in 60-11-111 and for the development and improvement of intermodal transportation facilities. Proceeds of all repayments of loans, including interest, made under this section must be deposited in the state general fund.

(2) An owner or operator of a railroad identified in 60-11-111(2) is eligible for a loan or grant under this section if the owner or operator:

(a) undertakes to repair, improve, or replace rail facilities to allow the continued operation of the railroad for local rail transportation service; and

(b) derives revenue from the continued operation of the railroad.

(3) A port authority created under Title 7, chapter 14, part 11, is eligible for a loan or grant under this section for the development or improvement of an intermodal transportation facility under this section if:

(a) the port authority is included in the state transportation planning process as described in 23 U.S.C. 135; and

(b) the intermodal transportation facility for which a loan or grant is sought is integrally related to the railroad transportation system of the state.

History: En. Sec. 5, Ch. 541, L. 1993; amd. Sec. 49, Ch. 422, L. 1997.

60-11-121. Legislative findings. (1) The legislature finds that it is in the interests of the state of Montana to preserve and encourage, whenever possible, Montana's railroad transportation infrastructure, especially:

(a) those railroads classified as Class III carriers under 49 CFR, chapter X, that operate mainly within the state; and

(b) those railroads within the state that are eligible for rail freight assistance programs under 49 U.S.C. 1654.

(2) The legislature further finds that:

(a) the railroad transportation infrastructure of the state is enhanced by the development and improvement of intermodal transportation facilities by port authorities created under Title 7, chapter 14, part 11; and

(b) abandonment of railroad branch lines and the increased demands for shipping have a negative impact on the highways of the state.

(3) The legislature further finds that the preservation of those railroads described in subsection (1)(b) and the development and improvement of intermodal transportation facilities are necessary to enhance access to markets, to mitigate rural isolation and long-term negative impacts on the highways of the state, and to promote the efficiency and effectiveness of the state's transportation system.

(4) The legislature declares that loans and grants made available under 60-11-120 to railroads and to port authorities are in the interest of the state.

History: En. Sec. 1, Ch. 513, L. 1991; amd. Sec. 2, Ch. 541, L. 1993; amd. Sec. 244, Ch. 42, L. 1997.

60-11-122. Repealed. Sec. 66, Ch. 422, L. 1997.

History: En. Sec. 2, Ch. 513, L. 1991; amd. Sec. 3, Ch. 541, L. 1993.

60-11-123. Disposition of revenue from state-owned railroads — use of money. (1) Unless otherwise required by law, revenue from the lease or sale of assets of or revenue paid to the state of Montana by an operator of a railroad owned by the state of Montana must be deposited in the state general fund.

(2) The department of transportation is authorized to administer, as provided in 60-11-120 through 60-11-123, funding available to provide for improvement of railroad tracks and associated facilities of any state-owned railroad in Montana and to provide loans and grants to railroad lines and intermodal transportation facilities as provided in 60-11-120.

History: En. Sec. 3, Ch. 513, L. 1991; amd. Sec. 4, Ch. 541, L. 1993; amd. Sec. 50, Ch. 422, L. 1997.

Part 2

Rail Passenger Service

60-11-201. Agreements for rail passenger service application. The governor or his authorized representative may negotiate with the proper authority representing any other state to establish an agreement to enable

Montana, in concert with other states, to submit an application to the rail passenger corporation for institution of rail passenger service under the provisions of the Rail Passenger Service Act (45 U.S.C. 563(b)) or any interstate or federal proposal for the purpose of maintaining or augmenting rail passenger service in the state. The governor may not participate in the submission of an application until the base agreement and any application have been approved by the legislature. However, the governor or his authorized representative may enter into agreements to expand Amtrak rail passenger service under 45 U.S.C. 563(b), as that statute reads on July 1, 1985, subject to appropriation by the legislature.

History: En. Sec. 1, Ch. 498, L. 1981; amd. Sec. 1, Ch. 306, L. 1985.

Cross-References

Powers and duties of Governor, 2-15-201.

Public transportation issues — Department of Transportation to represent state, 60-21-101.

Duty to furnish shipping and passenger facilities, 69-14-202.

Transportation of passengers and property, 69-14-558.

Parts 3 through 10 reserved

Part 11

Railroad Rehabilitation Revenue Bonds

60-11-1101. Intent. It is the intent of the legislature to provide a mechanism for the rehabilitation of railroad tracks and associated facilities in Montana and thereby to strengthen the rail transportation system of Montana and the state's economy.

History: En. Sec. 1, Ch. 564, L. 1979.

Cross-References

Provision of adequate accommodations and service, 69-14-117.

60-11-1102. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Bonds" means railroad rehabilitation revenue bonds authorized by 60-11-1103.

(2) "Department" means the department of transportation.

(3) "Person" means an individual or a partnership, association, corporation, or other business entity.

(4) "Project" or "rehabilitation project" means a business undertaking to repair, improve, or replace rail facilities to improve the safety and efficiency of the facilities and to derive revenue.

(5) "Rail facilities" means the line of track of a railroad, including spurs and extensions, and associated facilities, including but not limited to freight and commodities, storage and loading facilities, signal and switching systems, roadbeds, and machinery and equipment designed for rail maintenance, but the term does not include engines or rolling stock used for the transport of goods or passengers.

(6) "Refunding bonds" means railroad rehabilitation refunding revenue bonds authorized by 60-11-1109.

History: **En. Sec. 2, Ch. 564, L. 1979; amd. Sec. 1, Ch. 486, L. 1981; amd. Sec. 6, Ch. 512, L. 1991.**

60-11-1103. Railroad rehabilitation revenue bonds. (1) The department is authorized to issue and sell railroad rehabilitation revenue bonds under the provisions of this part. The department of administration shall assist the department in the issuance and sale of the bonds.

(2) The bonds do not constitute a debt, liability, obligation, or pledge of the faith and credit of the state but are payable solely from the revenues or assets of the department acquired or held in connection with rehabilitation projects.

History: **En. Sec. 3, Ch. 564, L. 1979; amd. Sec. 66, Ch. 83, L. 1989.**

Cross-References

Public bond issues, Title 17, ch. 5.

60-11-1104. Bond details. (1) The bonds may be issued as serial bonds payable in annual installments, as term bonds, or as a combination of serial and term bonds. A bond may not mature more than 50 years from its date of issue. The amount to be issued and sold at any one time shall be determined by the department. The bonds may be sold at either public or private sale and at prices above or below par as determined by the department.

(2) At the time of issuance of the bonds, the department shall specify the bond details, including but not limited to:

(a) whether serial, term, or combination thereof;

(b) the interest rate;

(c) the denominations;

(d) whether coupon or registered bonds;

(e) the manner, medium, and place of payment;

(f) whether redeemable or not and if redeemable, the manner of redemption;

(g) bond covenants.

History: **En. Sec. 4, Ch. 564, L. 1979; amd. Sec. 2, Ch. 486, L. 1981.**

60-11-1105. Bond limitations. (1) The interest rate or rates on the bonds shall be determined by the department. The total amount of bonds outstanding at any one time may not exceed $25 million.

(2) Each bond must have printed on its face a statement that the state is not liable on the bond, the bond is not a debt of the state, and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal or the interest on the bond.

History: **En. Sec. 5, Ch. 564, L. 1979; amd. Sec. 3, Ch. 486, L. 1981.**

Cross-References

Bonds — rates of interest, Title 17, ch. 5, part 1.

60-11-1106. Bond covenants. The department may enter into covenants with the bondholders by resolution, trust indenture, or other appropriate security instrument to enhance the marketability of the bonds. These covenants may relate to:

(1) the purpose to which the bond proceeds are to be applied;

(2) the use and disposition of the revenue of a project to which the bond proceeds are to be applied;

(3) the issuance of additional bonds to be paid from revenue of a project to which the bond proceeds are to be applied;

(4) the insurance to be carried on a project to which bond proceeds are to be applied;

(5) the accounting procedures and auditing powers related to a project;

(6) the terms and conditions upon which the bondholders are entitled to have a receiver appointed to operate a project to which bond proceeds are to be applied;

(7) the maintenance of a required capital reserve;

(8) the granting of a mortgage and security interest in the project and other properties of the borrower to secure the bonds;

(9) such other matters as the department considers customary and appropriate to secure the bonds.

History: En. Sec. 6, Ch. 564, L. 1979; amd. Sec. 4, Ch. 486, L. 1981.

60-11-1107. Bond accounts — appropriation. (1) There is a railroad rehabilitation account in the state special revenue fund provided for in 17-2-102. All bond proceeds shall be placed in the railroad rehabilitation account, and all money deposited in the account is continuously appropriated to the department and may be expended by the department for the purposes authorized in this part.

(2) There is a railroad rehabilitation reserve debt service fund as provided for in 17-2-102. Loan repayments and required capital reserves shall be deposited in the railroad rehabilitation reserve debt service fund, and all money deposited in the debt service fund is continuously appropriated to the department and may be expended for the payment of principal and interest on the bonds as they become due.

(3) If the department enters into a trust indenture pursuant to 60-11-1106, it may provide for the establishment of funds and accounts to be held by the trustee and may pledge and appropriate the bond proceeds, capital reserves, and loan payments to such funds and accounts notwithstanding the provisions of subsections (1) and (2).

History: En. Sec. 7, Ch. 564, L. 1979; amd. Sec. 5, Ch. 486, L. 1981; amd. Sec. 27, Ch. 298, L. 1983.

Cross-References

Fund structure, 17-2-102.

60-11-1108. Financial administration. The department shall institute strict accounting procedures and take whatever steps are required by the federal government in the financial administration of bond proceeds and loan accounts.

History: En. Sec. 8, Ch. 564, L. 1979.

60-11-1109. Refunding bonds. (1) The department may issue railroad rehabilitation refunding revenue bonds. These bonds are subject to the same provisions as the railroad rehabilitation revenue bonds.

(2) Refunding bonds may be sold or exchanged for outstanding bonds. The proceeds may be applied to the purchase, redemption, or repayment of outstanding bonds, and if not prevented by agreement with the bondholders, the proceeds may be invested as provided in Title 17, chapter 6, pending use of the proceeds for the purchase, redemption, or repayment of outstanding bonds.

History: En. Sec. 9, Ch. 564, L. 1979.

Cross-References
Refunding bonds, Title 17, ch. 5, part 3.

60-11-1110. Tax exemption. Bonds and refunding bonds, their transfer, and their income (including any profits made on their sale) are free from taxation by the state or any political subdivision or instrumentality of the state, except for inheritance and estate taxes.
History: En. Sec. 10, Ch. 564, L. 1979.

Cross-References
Inheritance and estate taxes, Title 72, ch. 16.

60-11-1111. Use of bond proceeds. (1) The proceeds of the bonds shall be used by the department to make loans to persons for financing rehabilitation projects on rail lines in Montana.

(2) The revenue from the project shall be used for repayment of the loan.
History: En. Sec. 11, Ch. 564, L. 1979.

60-11-1112. Loan details. The terms of any loan made pursuant to 60-11-1111 shall be specified by the department and shall be such as to assure sufficient payments to meet the obligations on the bonds. Any terms required under an agreement with the bondholder must be included in the loan agreement. The department may require the borrower to secure the loan with the project or other property of the borrower.
History: En. Sec. 12, Ch. 564, L. 1979; amd. Sec. 6, Ch. 486, L. 1981.

60-11-1113. Administration of loans. (1) The department shall develop forms and application procedures to enable a person to secure a loan authorized by 60-11-1111. Loans may only be made to persons the department determines to be capable of repaying the loan. The department shall develop criteria for this determination.

(2) Preference in making loans must be given to persons who intend to use the loan proceeds in such a manner as to create new jobs in Montana.
History: En. Sec. 13, Ch. 564, L. 1979.

Cross-References
Economic development bonds, Title 17, ch. 5, part 15.

Part 12
Rolling Stock Revenue Bonds

Part Cross-References
Public bond issues, Title 17, ch. 5.

60-11-1201. Intent. It is the intent of the legislature to provide a mechanism to alleviate the shortage of railroad rolling stock in Montana and to stimulate the economy of the state by strengthening the rail transportation system and by providing jobs for more Montanans.
History: En. Sec. 1, Ch. 565, L. 1979.

Cross-References
Economic development bonds, Title 17, ch. 5, part 15.

60-11-1202. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Bonds" means railroad rolling stock revenue bonds authorized by 60-11-1203.

(2) "Department" means the department of transportation.

(3) "Person" means an individual or a partnership, association, corporation, or other business entity.

(4) "Project" or "rolling stock project" means a business undertaking to manufacture, repair, purchase, or lease rolling stock and to subsequently use, sell, or lease the rolling stock to derive revenue.

(5) "Railroad rolling stock" or "rolling stock" means railroad cargo carriers used to transport grain, coal, ore, lumber, freight, and commodities.

(6) "Refunding bonds" means railroad rolling stock refunding revenue bonds authorized by 60-11-1209.

History: En. Sec. 2, Ch. 565, L. 1979; amd. Sec. 7, Ch. 486, L. 1981; amd. Sec. 6, Ch. 512, L. 1991.

60-11-1203. Railroad rolling stock revenue bonds. (1) The department is authorized to issue and sell railroad rolling stock revenue bonds under the provisions of this part. The department of administration shall assist the department in the issuance and sale of the bonds.

(2) The bonds do not constitute a debt, liability, obligation, or pledge of the faith and credit of the state but are payable solely from the revenues or assets of the department acquired or held in connection with rolling stock projects.

History: En. Sec. 3, Ch. 565, L. 1979; amd. Sec. 67, Ch. 83, L. 1989.

60-11-1204. Bond details. (1) The bonds may be issued as serial bonds payable in annual installments, as term bonds, or as a combination of serial and term bonds. A bond may not mature more than 50 years from its date of issue. The amount to be issued and sold at any one time shall be determined by the department. The bonds may be sold at either public or private sale and at prices above or below par as determined by the department.

(2) At the time of issuance of the bonds, the department shall specify the bond details, including but not limited to:

(a) whether serial, term, or combination thereof;

(b) the interest rate;

(c) the denominations;

(d) whether coupon or registered bonds;

(e) the manner, medium, and place of payment;

(f) whether redeemable or not and if redeemable, the manner of redemption;

(g) bond covenants.

History: En. Sec. 4, Ch. 565, L. 1979; amd. Sec. 8, Ch. 486, L. 1981.

60-11-1205. Bond limitations. (1) The interest rate or rates on the bonds shall be determined by the department. The total amount of bonds outstanding at any one time may not exceed $75 million.

(2) Each bond must have printed on its face a statement that the state is not liable on the bond, the bond is not a debt of the state, and neither the faith

and credit nor the taxing power of the state is pledged to the payment of the principal or the interest on the bond.

History: **En. Sec. 5, Ch. 565, L. 1979; amd. Sec. 9, Ch. 486, L. 1981.**

Cross-References

Bonds — rates of interest, Title 17, ch. 5, part 1.

60-11-1206. Bond covenants. The department may enter into covenants with the bondholders by resolution, trust indenture, or other appropriate instrument to enhance the marketability of the bonds. These covenants may relate to:

(1) the purpose to which the bond proceeds are to be applied;

(2) the use and disposition of the revenue of a project to which the bond proceeds are to be applied;

(3) the issuance of additional bonds to be paid from revenue of a project to which the bond proceeds are to be applied;

(4) the insurance to be carried on a project to which bond proceeds are to be applied;

(5) the accounting procedures and auditing powers related to a project;

(6) the terms and conditions upon which the bondholders are entitled to have a receiver appointed to operate a project to which bond proceeds are to be applied;

(7) the maintenance of a required capital reserve;

(8) the granting of a mortgage and security interest in the project and other properties of the borrower to secure the bonds;

(9) such other matters as the department considers customary and appropriate to secure the bonds.

History: **En. Sec. 6, Ch. 565, L. 1979; amd. Sec. 10, Ch. 486, L. 1981.**

60-11-1207. Bond accounts — appropriation. (1) There is a railroad rolling stock account in the state special revenue fund provided for in 17-2-102. All bond proceeds shall be placed in the railroad rolling stock account, and all money deposited in the account is continuously appropriated to the department and may be expended by the department for the purposes authorized in this part.

(2) There is a railroad rolling stock debt service fund as provided for in 17-2-102. Loan repayments and required capital reserves shall be deposited in the railroad rolling stock fund, and all money deposited in the fund is continuously appropriated to the department and may be expended for the payment of principal and interest on the bonds as they become due.

(3) If the department enters into a trust indenture pursuant to 60-11-1206, it may provide for the establishment of funds and accounts to be held by the trustee and may pledge and appropriate the bond proceeds, capital reserves, and loan payments to such funds and accounts, notwithstanding the provisions of subsections (1) and (2).

History: **En. Sec. 7, Ch. 565, L. 1979; amd. Sec. 11, Ch. 486, L. 1981; amd. Sec. 28, Ch. 281, L. 1983.**

Cross-References

Fund structure, 17-2-102.

60-11-1208. Financial administration. The department shall institute strict accounting procedures and take whatever steps are required by the federal government in the financial administration of bond proceeds and loan accounts.

History: En. Sec. 8, Ch. 565, L. 1979.

60-11-1209. Refunding bonds. (1) The department may issue railroad rolling stock refunding revenue bonds. These bonds are subject to the same provisions as the railroad rolling stock revenue bonds.

(2) Refunding bonds may be sold or exchanged for outstanding bonds. The proceeds may be applied to the purchase, redemption, or repayment of outstanding bonds, and if not prevented by agreement with the bondholders, the proceeds may be invested as provided in Title 17, chapter 6, pending use of the proceeds for the purchase, redemption, or repayment of outstanding bonds.

History: En. Sec. 9, Ch. 565, L. 1979.

Cross-References

Refunding bonds, Title 17, ch. 5, part 3.

60-11-1210. Tax exemption. Bonds and refunding bonds, their transfer, and their income (including any profits made on their sale) are free from taxation by the state or any political subdivision or instrumentality of the state, except for inheritance and estate taxes.

History: En. Sec. 10, Ch. 565, L. 1979.

Cross-References

Inheritance and estate taxes, Title 72, ch. 16.

60-11-1211. Use of bond proceeds. (1) The proceeds of the bonds shall be used by the department to make loans to persons doing business or resident in Montana for financing rolling stock projects when the rolling stock is to be based in Montana and used primarily for the transport of grain, coal, ore, lumber, freight, and commodities produced in Montana.

(2) The revenue from the sale or use of the rolling stock shall be used for repayment of the loans.

History: En. Sec. 11, Ch. 565, L. 1979; amd. Sec. 12, Ch. 486, L. 1981.

Cross-References

Economic development bonds, Title 17, ch. 5, part 15.

60-11-1212. Loan details. The terms of any loan made pursuant to 60-11-1211 shall be specified by the department and shall be such as to assure sufficient payments to enable the department to meet its obligations on the bonds. Any terms required under an agreement with the bondholder must be included in the loan agreement. The department may require the borrower to secure the loan with the project or other property of the borrower.

History: En. Sec. 12, Ch. 565, L. 1979; amd. Sec. 13, Ch. 486, L. 1981.

60-11-1213. Administration of loans. (1) The department shall develop forms and application procedures to enable a person to secure a loan authorized by 60-11-1211. Loans may only be made to persons the department determines to be capable of repaying the loan. The department shall develop criteria for this determination.

(2) Preference in making loans shall be given to persons who intend to use the loan proceeds in such a manner as to create new jobs in Montana.

(3) The loan agreement may provide for a reduction in loan interest with the reduction proportional to the amount of time the rolling stock is located in Montana. The interest rate may not be reduced below the level required to meet obligations on the bonds or required by agreement with the bondholders.

History: En. Sec. 13, Ch. 565, L. 1979.

CHAPTERS 12 THROUGH 20

RESERVED

CHAPTER 21

PUBLIC TRANSPORTATION

Part 1 — General Provisions

60-21-101. Department of transportation authorized to represent the state on public transportation issues.

Part 1

General Provisions

60-21-101. Department of transportation authorized to represent the state on public transportation issues. The department of transportation may represent the state of Montana on any issue relating to any mode of public transportation in any judicial or administrative forum of this state, any other state, or the United States.

History: En. Sec. 1, Ch. 92, L. 1983; amd. Sec. 6, Ch. 512, L. 1991.

Cross-References

Local government — transportation, Title 7, ch. 14.

Traffic regulation, Title 61, ch. 8.

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TITLE 61

MOTOR VEHICLES

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CHAPTER 1

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Part 1
Vehicles

61-1-101. Definitions. Unless the context indicates otherwise, the words and phrases defined in this chapter have, as used in this title, the meanings respectively ascribed to them in this chapter.

History: En. Sec. 2, Ch. 267, L. 1947; R.C.M. 1947, 31-118; amd. Sec. 1, Ch. 421, L. 1979.

61-1-102. Motor vehicle. "Motor vehicle" means a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state. For the purpose of chapter 3, the term also includes trailers, semitrailers, and housetrailers. For the purpose of chapter 3, parts 1 and 2, the term also includes campers. The term does not include a bicycle as defined in 61-1-123.

History: Ap.p. Sec. 6-215, Ch. 197, L. 1965; amd. Sec. 5, Ch. 290, L. 1967; amd. Sec. 119, Ch. 316, L. 1974; amd. Sec. 15, Ch. 74, L. 1975; Sec. 32-3315, R.C.M. 1947; Ap.p. Sec. 4, Ch. 75, L. 1917; re-en. Sec. 1758, R.C.M. 1921; amd. Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758, R.C.M. 1935; amd. Sec. 5, Ch. 72, L. 1937; amd. Sec. 1, Ch. 148, L. 1943; amd. Sec. 1, Ch. 63, L. 1945; amd. Sec. 1, Ch. 115, L. 1953; amd. Sec. 1, Ch. 200, L. 1955; amd. Sec. 1, Ch. 139, L. 1961; amd. Sec. 7, Ch. 127, L. 1969; amd. Sec. 1, Ch. 179, L. 1971; amd. Sec. 1, Ch. 104, L. 1975; Sec. 53-107, R.C.M. 1947; R.C.M. 1947, 32-3315(part), 53-107(part); amd. Sec. 2, Ch. 421, L. 1979; amd. Sec. 2, Ch. 508, L. 1979; amd. Sec. 1, Ch. 715, L. 1991; amd. Sec. 1, Ch. 105, L. 1997.

Cross-References

Retail installment sales — motor vehicle defined, 31-1-202.

Criminal trespass to vehicles, 45-6-202.

Vehicles subject to staggered registration, 61-3-313.

Required motor vehicle insurance, 61-6-301.

61-1-103. Vehicle. "Vehicle" means every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by animal power or used exclusively upon stationary rails or tracks. However, in chapters 3 and 4, the term means "motor vehicle" as defined in this part; and in chapter 8, part 4, this term does not include a bicycle as defined in 61-1-123.

History: **Ap.p. Sec. 3, Ch. 267, L. 1947; amd. Sec. 1, Ch. 291, L. 1973; Sec. 31-119, R.C.M. 1947; Ap.p. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R.C.M. 1921; re-en. Sec. 1763, R.C.M. 1935; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965; Sec. 53-133, R.C.M. 1947; R.C.M. 1947, 31-119(a), 53-133(i); amd. Sec. 3, Ch. 421, L. 1979; amd. Sec. 3, Ch. 508, L. 1979; amd. Sec. 1, Ch. 450, L. 1983; amd. Sec. 1, Ch. 99, L. 1985.**

61-1-104. Special mobile equipment. (1) "Special mobile equipment" means a vehicle not designed for the transportation of persons or property on the highways but incidentally operated or moved over the highways, including road construction or maintenance machinery, ditch-digging apparatus, and well-boring apparatus. The fact that equipment is permanently attached to a vehicle does not make the vehicle special mobile equipment. The enumeration in this section is partial and does not exclude other vehicles that are within the general terms of this section.

(2) For purposes of Title 61, chapter 3, and Title 61, chapter 10, part 2, a motor vehicle or a trailer designed and used to apply fertilizer to agricultural land must be treated as special mobile equipment.

(3) For registration purposes, a log loader must be treated as special mobile equipment, subject to the identification and registration exemptions and regulations in 61-3-431.

History: **En. Sec. 2, Ch. 263, L. 1955; amd. Sec. 1, Ch. 153, L. 1975; R.C.M. 1947, 32-2102(j); amd. Sec. 4, Ch. 421, L. 1979; amd. Sec. 1, Ch. 84, L. 1993; amd. Sec. 1, Ch. 314, L. 1995; amd. Sec. 1, Ch. 159, L. 1997.**

Cross-References

General assessment day, 15-8-201.

Vehicles subject to staggered registration, 61-3-313.

Special mobile equipment — exemption from registration, 61-3-431.

Application for dealer's license, 61-4-101.

Service brakes — adequacy, 61-9-302.

Brakes required on all wheels — exceptions, 61-9-304.

61-1-105. Motorcycle. "Motorcycle" means a motor vehicle having not more than three wheels in contact with the ground and a saddle on which the operator sits or a platform on which he stands and a driving wheel in contact with the ground in addition to the wheels of the vehicle itself. A motorcycle may carry one or more attachments and a seat for the conveyance of a passenger. The term does not include a tractor or a bicycle as defined in 61-1-123.

History: **En. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R.C.M. 1921; re-en. Sec. 1763, R.C.M. 1935; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965; R.C.M. 1947, 53-133(b); amd. Sec. 5, Ch. 421, L. 1979; amd. Sec. 4, Ch. 508, L. 1979.**

Cross-References

Headgear required for minor motorcycle riders, 61-9-417.

Motorcycle noise suppression devices, 61-9-418.

Violation of motorcycle requirements — penalty, 61-9-518.

61-1-106. Motor-driven cycle. "Motor-driven cycle" means every motorcycle, including every motor scooter, with a motor which produces not to exceed 5 horsepower. The term does not include a bicycle as defined in 61-1-123.

History: **En. Sec. 2, Ch. 263, L. 1955; amd. Sec. 1, Ch. 153, L. 1975; R.C.M. 1947, 32-2102(d); amd. Sec. 5, Ch. 508, L. 1979.**

61-1-107. Truck. "Truck" or "motortruck" means every motor vehicle designed, used, or maintained primarily for the transportation of property.

History: **En. Sec. 4, Ch. 263, L. 1955; R.C.M. 1947, 32-2104(a); amd. Sec. 6, Ch. 421, L. 1979.**

Cross-References

Size — weight — load, Title 61, ch. 10.

61-1-108. Truck tractor. "Truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

History: **En. Sec. 3, Ch. 263, L. 1955; R.C.M. 1947, 32-2103(a); amd. Sec. 7, Ch. 421, L. 1979.**

Cross-References

Size — weight — load, Title 61, ch. 10.

61-1-109. Farm tractor. "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

History: **En. Sec. 3, Ch. 267, L. 1947; amd. Sec. 1, Ch. 291, L. 1973; R.C.M. 1947, 31-119(c); amd. Sec. 8, Ch. 421, L. 1979.**

Cross-References

Special mobile equipment, 61-1-104.

61-1-110. Road tractor. "Road tractor" means every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

History: **En. Sec. 3, Ch. 263, L. 1955; R.C.M. 1947, 32-2103(c).**

61-1-111. Trailer. "Trailer" means every vehicle, with or without motive power (other than a pole trailer), designed for carrying property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle, except that as used in chapters 3 and 4 the term includes every vehicle without motive power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle.

History: **Ap.p. Sec. 5, Ch. 263, L. 1955; amd. Sec. 1, Ch. 204, L. 1957; Sec. 32-2105, R.C.M. 1947; Ap.p. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R.C.M. 1921; re-en. Sec. 1763, R.C.M. 1935; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965; Sec. 53-133, R.C.M. 1947; R.C.M. 1947, 32-2105(a), 53-133(d); amd. Sec. 9, Ch. 421, L. 1979.**

Cross-References

Size — weight — load, Title 61, ch. 10.

61-1-112. Semitrailer. "Semitrailer" means every vehicle, with or without motive power (other than a pole trailer), designed for carrying property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle, except that as used in chapters 3 and 4 the term includes a pole trailer.

History: **Ap.p. Sec. 5, Ch. 263, L. 1955; amd. Sec. 1, Ch. 204, L. 1957; Sec. 32-1205, R.C.M. 1947; Ap.p. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R.C.M. 1921; re-en. Sec. 1763, R.C.M. 1935; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965; Sec. 53-133, R.C.M. 1947; R.C.M. 1947, 32-2105(b), 53-133(e); amd. Sec. 10, Ch. 421, L. 1979.**

Cross-References

Size — weight — load, Title 61, ch. 10.

61-1-113. Dolly or converter gear. "Dolly or converter gear" means a device consisting of one or two axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, thereby converting a semitrailer into a trailer.

History: En. 32-1123.2 by Sec. 13, Ch. 316, L. 1974; amd. Sec. 1, Ch. 269, L. 1977; R.C.M. 1947, 32-1123.2(7).

61-1-114. Pole trailer. "Pole trailer" means every vehicle without power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable generally of sustaining themselves as beams between the supporting connections.

History: En. Sec. 5, Ch. 263, L. 1955; amd. Sec. 1, Ch. 204, L. 1957; R.C.M. 1947, 32-2105(c).

61-1-115. Bus. "Bus" means every motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

History: En. Sec. 3, Ch. 267, L. 1947; amd. Sec. 1, Ch. 291, L. 1973; Sec. 31-119, R.C.M. 1947; R.C.M. 1947, 31-119(e).

Cross-References

Carriers of passengers, Title 69, ch. 11, part 2.

61-1-116. School bus. "School bus" has the meaning given in 20-10-101.

History: En. Sec. 3, Ch. 267, L. 1947; amd. Sec. 1, Ch. 291, L. 1973; Sec. 31-119, R.C.M. 1947; R.C.M. 1947, 31-119(d); amd. Sec. 2, Ch. 525, L. 1983.

61-1-117. Used motor vehicle. The term "used motor vehicle" as used in chapters 3 and 4 shall include any motor vehicle which has been sold, bargained, exchanged, given away, or title transferred from the person who first took title to it from the manufacturer, importer, dealer or wholesaler, or agent of the manufacturer or importer, and so used as to have become what is commonly known as "second hand" within the ordinary meaning thereof.

History: En. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R.C.M. 1921; re-en. Sec. 1763, R.C.M. 1935; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965; R.C.M. 1947, 53-133(j); amd. Sec. 12, Ch. 383, L. 1991.

Cross-References

Used motor vehicles — transfer to and from dealers, 61-4-111.

61-1-118. Police vehicle. "Police vehicle" means any vehicle used in the service of any law enforcement agency.

History: En. Sec. 2, Ch. 263, L. 1955; amd. Sec. 1, Ch. 153, L. 1975; R.C.M. 1947, 32-2102(e).

Cross-References

Operation of Sheriff's vehicle, 7-32-2125.

Audible and visual signals on vehicles, 61-9-402.

61-1-119. Authorized emergency vehicles. "Authorized emergency vehicles" means vehicles of the fire department, fire patrol, and such ambulances and emergency vehicles as are designated or authorized by the department.

History: En. Sec. 2, Ch. 263, L. 1955; amd. Sec. 1, Ch. 153, L. 1975; R.C.M. 1947, 32-2102(f); amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Fire protection, Title 7, ch. 33.

Ambulance services, Title 7, ch. 34, part 1.

61-1-120. Emergency service vehicles. "Emergency service vehicles" means emergency service vehicles of state, county, or municipal departments or public service vehicles, commercial tow trucks, or commercial road service trucks, which by the nature of their operation cause a vehicular traffic hazard.

History: En. Sec. 2, Ch. 263, L. 1955; amd. Sec. 1, Ch. 153, L. 1975; R.C.M. 1947, 32-2102(g); amd. Sec. 12, Ch. 283, L. 1995.

Cross-References

Commercial tow car requirements, 61-9-416.

61-1-121. Implement of husbandry. "Implement of husbandry" means every vehicle which is designed for agricultural purposes and exclusively used by the owner thereof in the conduct of his agricultural operations.

History: En. Sec. 21.2, Ch. 263, L. 1955; R.C.M. 1947, 32-2123(b).

Cross-References

Farm tractor, 61-1-109.

Haystack movers, 61-10-123.

Special fees — certain farm vehicles, 61-10-206.

61-1-122. Repealed. Sec. 315, Ch. 42, L. 1997.

History: En. Sec. 4, Ch. 263, L. 1955; R.C.M. 1947, 32-2104(c).

61-1-123. Bicycle. "Bicycle" means:

(1) every vehicle propelled solely by human power upon which any person may ride, having two tandem wheels and a seat height of more than 25 inches from the ground when the seat is raised to its highest position, except scooters and similar devices; or

(2) every vehicle equipped with two or three wheels, foot pedals to permit muscular propulsion and an independent power source providing a maximum of 2 brake horsepower. If a combustion engine is used, the maximum piston or rotor displacement may not exceed 3.05 cubic inches (50 centimeters) regardless of the number of chambers in the power source. The power source must not be capable of propelling the device, unassisted, at a speed exceeding 30 miles an hour (48.28 kilometers an hour) on a level surface. The device must be equipped with a power drive system that functions directly or automatically only and does not require clutching or shifting by the operator after the drive system is engaged.

History: En. Sec. 2, Ch. 263, L. 1955; amd. Sec. 1, Ch. 153, L. 1975; R.C.M. 1947, 32-2102(i); amd. Sec. 6, Ch. 508, L. 1979; amd. Sec. 2, Ch. 450, L. 1983.

Cross-References

Taxation — exempt categories, 15-6-201.

Footpaths and bicycle trails, Title 60, ch. 3, part 3.

Motor vehicle defined, 61-1-102.

Vehicle defined, 61-1-103.

Motorcycle defined, 61-1-105.

Motor-driven cycle defined, 61-1-106.

Operators and chauffeurs to be licensed, 61-5-102.

Bicycle traffic, Title 61, ch. 8, part 6.

61-1-124. Railroad train. "Railroad train" means a steam engine or electric or other motor, with or without cars coupled thereto, operated upon rails, except streetcars.

History: En. Sec. 7, Ch. 263, L. 1955; R.C.M. 1947, 32-2107(b).

Cross-References
Rail transportation, Title 60, ch. 11
Railroads, Title 69, ch. 14.

61-1-125. Pneumatic tire. "Pneumatic tire" means every tire in which compressed air is designed to support the load.

History: En. Sec. 6, Ch. 263, L. 1955; R.C.M. 1947, 32-2106(a).

Cross-References
Restrictions as to tire equipment, 61-9-406.

61-1-126. Solid tire. "Solid tire" means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

History: En. Sec. 6, Ch. 263, L. 1955; R.C.M. 1947, 32-2106(b).

61-1-127. Metal tire. "Metal tire" means every tire the surface of which in contact with the highway is wholly or partly metal or other hard nonresilient material.

History: En. Sec. 6, Ch. 263, L. 1955; R.C.M. 1947, 32-2106(c).

61-1-128. Axle. "Axle" means a transverse beam which is the common axis of rotation of one or more wheels and which, to receive credit for allowable total gross loading, must be capable of continuously transmitting a proportionate share of the total gross load to the roadway when the axle is in operation.

History: En. 32-1123.2 by Sec. 13, Ch. 316, L. 1974; amd. Sec. 1, Ch. 269, L. 1977; R.C.M. 1947, 32-1123.2(8).

Cross-References
Measuring distance between axles, 61-10-106.

61-1-129. Camper. The term "camper" as used in 61-1-102, 61-3-524, and 61-3-525 includes but is not limited to truck camper, chassis-mounted camper, cab-over, half cab-over, noncab-over, telescopic, and telescopic cab-over. The term does not include a truck canopy cover or topper.

History: En. Sec. 1, Ch. 414, L. 1973; amd. Sec. 1, Ch. 112, L. 1977; R.C.M. 1947, 53-644; amd. Sec. 2, Ch. 715, L. 1991; amd. Sec. 4, Ch. 121, L. 1997.

61-1-130. Motor home. "Motor home" as used in 61-3-521 and 61-3-522 means a motor vehicle:

(1) designed to provide temporary living quarters, built as an integral part of or permanently attached to a self-propelled motor vehicle chassis or van;

(2) containing permanently installed independent life support systems that meet the ANSI/A119.2 standard; and

(3) providing at least four of the following types of facilities:

(a) cooking, refrigeration, or icebox;

(b) self-contained toilet;

(c) heating or air-conditioning, or both;

(d) potable water supply, including a faucet and sink; or

(e) separate 110-volt or 125-volt electrical power supply or a liquefied petroleum gas supply, or both.

History: En. Sec. 5, Ch. 712, L. 1979; amd. Sec. 1, Ch. 724, L. 1991.

61-1-131. Travel trailer. "Travel trailer" as used in 61-3-521 and 61-3-523 means a trailer 45 feet or less in length and 8 feet or less in width originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use and not used as a principal residence.

History: En. Sec. 6, Ch. 712, L. 1979; amd. Sec. 1, Ch. 488, L. 1983.

61-1-132. Recreational vehicle. The term "recreational vehicle" as used in chapter 4, part 1, of this title and 61-10-141 includes travel trailers as defined in 61-1-131, motor homes as defined in 61-1-130, and other self-propelled vehicles originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use.

History: En. Sec. 1, Ch. 443, L. 1981; amd. Sec. 1, Ch. 57, L. 1989; amd. Sec. 10, Ch. 409, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 409 near beginning substituted "chapter 4, part 1, of this title" for "61-4-101 through 61-4-105". Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

Cross-References

Retail installment sales — recreational vehicle defined, 31-1-202.

61-1-133. Quadricycle. (1) "Quadricycle" means a four-wheeled motor vehicle, designed for on-road or off-road use, having a seat or saddle upon which the operator sits and a motor capable of producing not more than 50 horsepower.

(2) The term does not include golf carts.

History: En. Sec. 1, Ch. 516, L. 1985; amd. Sec. 1, Ch. 431, L. 1997.

61-1-134. Commercial motor vehicle defined — exceptions. (1) Except as provided in subsection (2), "commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

(a) has a gross combination weight rating or, in the absence of a gross combination weight rating, a declared weight of 26,001 pounds or more inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(b) has a gross vehicle weight or manufacturer's rated capacity of 26,001 pounds or more;

(c) is designed or used to transport 16 passengers or more, including the driver;

(d) is a school bus as defined in 20-10-101; or

(e) is of any size and is used to transport any quantity or form of hazardous material required to be placarded pursuant to Title 49, Code of Federal Regulations.

(2) The following vehicles are not commercial motor vehicles:

(a) a vehicle exempt from taxation, used for firefighting, and bearing Montana tax-exempt plates;

(b) a police emergency response vehicle; or

(c) a vehicle:

(i) controlled and operated by a farmer or person employed by a farmer;

(ii) used to transport farm products, farm machinery, or farm supplies within Montana or within 150 miles of the farm headquarters; and

(iii) not used to transport goods for compensation or hire.

(3) For purposes of this section, "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person.

History: En. Sec. 1, Ch. 443, L. 1987; amd. Sec. 11, Ch. 378, L. 1989; amd. Sec. 1, Ch. 521, L. 1989; amd. Sec. 1, Ch. 127, L. 1991; amd. Sec. 4, Ch. 195, L. 1993; amd. Sec. 6, Ch. 575, L. 1993; amd. Sec. 1, Ch. 53, L. 1995; amd. Sec. 2, Ch. 105, L. 1997.

61-1-135. Commercial driver's license. "Commercial driver's license" means a Montana driver's license that authorizes the licensee to operate a class of commercial motor vehicle.

History: En. Sec. 2, Ch. 443, L. 1987; amd. Sec. 1, Ch. 563, L. 1991; amd. Sec. 5, Ch. 195, L. 1993.

Cross-References

Classification of commercial driver's license, 61-5-112.

61-1-136. Driver's license. "Driver's license" means any license or permit to operate a motor vehicle issued under or granted by the laws of this state, including:

(1) any temporary license or instruction permit;

(2) the privilege of any person to drive a motor vehicle, whether or not the person holds a valid license;

(3) any nonresident's driving privilege;

(4) a motorcycle endorsement; and

(5) a commercial driver's license.

History: En. Sec. 3, Ch. 443, L. 1987; amd. Sec. 6, Ch. 195, L. 1993.

Cross-References

Driver licensing and sanctions, Title 61, ch. 5.

61-1-137. Hazardous material. "Hazardous material" means a substance or material, defined or listed as a hazardous material in Title 49, Code of Federal Regulations, in a quantity and form that may pose an unreasonable risk to health and safety or property when transported.

History: En. Sec. 4, Ch. 443, L. 1987.

61-1-138. Van. "Van" means a motor vehicle designed for the transportation of at least six persons and not more than nine persons and intended for but not limited to family or personal transportation without compensation.

History: En. Sec. 2, Ch. 791, L. 1991.

61-1-139. Light vehicle. "Light vehicle" means a motor vehicle commonly referred to as an automobile, van, sport utility vehicle, or truck having a manufacturer's rated capacity of 1 ton or less.

History: En. Sec. 16, Ch. 496, L. 1997.

61-1-140. Sport utility vehicle. "Sport utility vehicle" means a light vehicle designed to transport 10 or fewer persons that is constructed on a truck chassis or that has special features for occasional off-road use. The term does not include trucks having a manufacturer's rated capacity of 1 ton or less.

History: En. Sec. 17, Ch. 496, L. 1997.

61-1-141. New motor vehicle. "New motor vehicle" means a motor vehicle, regardless of the mileage of the vehicle, the legal or equitable title to which has never been transferred by a manufacturer, distributor, or dealer to another person as the result of a retail sale.

History: En. Sec. 2, Ch. 409, L. 1999.

Compiler's Comments

Effective Date: Section 33(2), Ch. 409, L. 1999, provided that this section is effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

Part 2
Roads

Part Cross-References

County roads, Title 7, ch. 14, parts 21 through 26.

Highways and Transportation, Title 60.

61-1-201. Highway. "Highway" means the entire width between the boundary lines of every publicly maintained way when any part thereof is open to the use of the public for purposes of vehicular travel, except that for the purpose of chapter 8 the term also includes ways which have been or shall be dedicated to public use.

History: En. Sec. 6, Ch. 267, L. 1947; R.C.M. 1947, 31-122(part); amd. Sec. 11, Ch. 421, L. 1979.

61-1-202. Public highway. "Public highway" means "highway" as defined in 61-1-201.

History: En. Sec. 7, Ch. 242, L. 1971; Sec. 32-1638, R.C.M. 1947; amd. and redes. 32-1631.1 by Sec. 48, Ch. 316, L. 1974; R.C.M. 1947, 32-1631.1; amd. Sec. 12, Ch. 421, L. 1979.

61-1-203. Street. "Street" means the entire width between the boundary lines of every publicly maintained way when any part thereof is open to the use of the public for purposes of vehicular travel.

History: En. Sec. 6, Ch. 267, L. 1947; R.C.M. 1947, 31-122(part); amd. Sec. 13, Ch. 421, L. 1979.

Cross-References

Improvement districts, Title 7, ch. 12.

Municipal trafficways, Title 7, ch. 14, part 41.

Establishment and change of street grade, Title 7, ch. 14, part 42.

61-1-204. Arterial street. "Arterial street" means any U. S. or state numbered route, controlled-access highway, or other major radial or circumferential street or highway designated by local authorities within their respective jurisdictions as part of a major arterial system or highway.

History: En. Sec. 21.2, Ch. 263, L. 1955; R.C.M. 1947, 32-2123(a).

Cross-References

Acquisition of property for controlled-access facility, 7-14-101.

Control of access, Title 60, ch. 5, part 1.

Arterial highway defined, 60-5-102.

Restricted and controlled access, 61-8-331.

61-1-205. Private road or driveway. "Private road" or "driveway" means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

History: En. Sec. 14, Ch. 263, L. 1955; amd. Sec. 2, Ch. 247, L. 1959; R.C.M. 1947, 32-2114(b).

Cross-References

Vehicle entering highway from private road, 61-8-343.

61-1-206. Roadway. Except as used in 61-8-605, "roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term "roadway" refers to any roadway separately but not to all roadways collectively.

History: En. Sec. 14, Ch. 263, L. 1955; amd. Sec. 2, Ch. 247, L. 1959; R.C.M. 1947, 32-2114(c); amd. Sec. 1, Ch. 169, L. 1991.

61-1-207. Laned roadway. "Laned roadway" means a roadway which is divided into two or more clearly marked lanes for vehicular traffic.

History: En. Sec. 14, Ch. 263, L. 1955; amd. Sec. 2, Ch. 247, L. 1959; R.C.M. 1947, 32-2114(e).

Cross-References

Driving on roadways laned for traffic, 61-8-328.

61-1-208. Sidewalk. "Sidewalk" means that portion of a street between the curb lines or the lateral lines of a roadway, and the adjacent property lines, intended for use of pedestrians.

History: En. Sec. 14, Ch. 263, L. 1955; amd. Sec. 2, Ch. 247, L. 1959; R.C.M. 1947, 32-2114(d).

Cross-References

Construction and maintenance of sidewalks, curbs, and gutters, 7-14-4122.

Regulation of sidewalks, 7-14-4123.

Pedestrian's right-of-way on sidewalks, 61-8-509.

Bicycles on sidewalks, 61-8-608.

61-1-209. Crosswalk. "Crosswalk" means:

(1) that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway;

(2) any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrians crossing by lines or other markings on the surface.

History: En. Sec. 16, Ch. 263, L. 1955; R.C.M. 1947, 32-2116.

Cross-References

Pedestrian malls, Title 7, ch. 14, part 47.

School safety patrols, 20-1-408.

Pedestrian traffic, Title 61, ch. 8, part 5.

61-1-210. Through highway. "Through highway" means every highway or portion thereof at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in chapter 8 of this title.

History: En. Sec. 14, Ch. 263, L. 1955; amd. Sec. 2, Ch. 247, L. 1959; R.C.M. 1947, 32-2114(f).

Cross-References

Throughway defined, 60-5-102.

61-1-211. Controlled-access highway. "Controlled-access highway" means every highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street, or roadway.

History: En. Sec. 14, Ch. 263, L. 1955; amd. Sec. 2, Ch. 247, L. 1959; R.C.M. 1947, 32-2114(g).

Cross-References

Controlled-access highway defined, 60-5-102.

Restricted and controlled access, 61-8-331.

Restrictions on use of controlled-access roadway, 61-8-332.

61-1-212. Intersection. (1) "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines or if none then the lateral boundary lines of the roadways of two highways which join one another at or approximately at right angles or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(2) Where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

History: En. Sec. 15, Ch. 263, L. 1955; R.C.M. 1947, 32-2115.

Cross-References

Throughway intersection area defined, 60-5-102.

Traffic regulation at intersections, 61-8-333, 61-8-339 through 61-8-341.

Part 3

Persons — Agencies

61-1-301. Department. "Department" means the department of justice acting directly or through its duly authorized officers or agents.

History: En. Sec. 7, Ch. 267, L. 1947; amd. Sec. 1, Ch. 155, L. 1969; R.C.M. 1947, 31-123(b); amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Duties of Department of Justice — records, 61-3-101.

61-1-302. Chief. "Chief" means the chief of the Montana highway patrol.

History: En. Sec. 7, Ch. 267, L. 1947; amd. Sec. 1, Ch. 155, L. 1969; R.C.M. 1947, 31-123(a).

Cross-References

Highway Patrol Chief, Title 44, ch. 1, part 2.

61-1-303. Commission. "Commission" means the state transportation commission.

History: En. Sec. 10, Ch. 263, L. 1955; R.C.M. 1947, 32-2110(c); amd. Sec. 6, Ch. 75, L. 1995.

Cross-References

Transportation Commission — membership and districts, 2-15-2502.

Transportation Commission, Title 60, ch. 2, part 1.

61-1-304. Police officer. "Police officer" means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

History: En. Sec. 12, Ch. 263, L. 1955; R.C.M. 1947, 32-2112(part).

Cross-References

Municipal police force, Title 7, ch. 32, part 41.

61-1-305. Highway patrol officer. "Highway patrol officer" means every state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

History: En. Sec. 12, Ch. 263, L. 1955; R.C.M. 1947, 32-2112(part); amd. Sec. 14, Ch. 421, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Highway patrol, Title 44, ch. 1.

61-1-306. Local authorities. "Local authorities" means every county, municipal, and other local board or body having authority to enact laws relating to traffic under the constitution and laws of this state.

History: En. Sec. 13, Ch. 263, L. 1955; R.C.M. 1947, 32-2113.

Cross-References

Local government officers, Title 7, ch. 4.

General provisions related to county roads, Title 7, ch. 14, part 21.

Municipal trafficways, Title 7, ch. 14, part 41.

61-1-307. Person. "Person" means an individual, corporation, partnership, association, firm, or other legal entity. "Person" as used in part 1, chapter 6, means every natural person, firm, partnership, association, or corporation.

History: Ap.p. Sec. 1, Ch. 381, L. 1977; Sec. 51-609, R.C.M. 1947; Ap.p. Sec. 1, Ch. 204, L. 1951; amd. Sec. 1, Ch. 30, L. 1967; Sec. 53-418, R.C.M. 1947; R.C.M. 1947, 51-609(4), 53-418(11); amd. Sec. 15, Ch. 421, L. 1979.

Cross-References

Corporations, Title 35, ch. 1 through 4.

Partnerships, Title 35, ch. 10 through 13.

Associations, Title 35, ch. 15, 16.

61-1-308. Pedestrian. "Pedestrian" means any person afoot.

History: En. Sec. 11, Ch. 263, L. 1955; R.C.M. 1947, 32-2111(b).

Cross-References

Pedestrian traffic, Title 61, ch. 8, part 5.

61-1-309. Driver. "Driver" means every person who drives or is in actual physical control of a vehicle.

History: En. Sec. 11, Ch. 263, L. 1955; R.C.M. 1947, 32-2111(c).

Cross-References

Licensing of drivers, Title 61, ch. 5.

61-1-310. Owner. "Owner" means a person who holds the legal title to a vehicle. If a vehicle is the subject of an agreement for the conditional sale thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner is the person in whom is vested right of possession or control.

History: En. Sec. 2, Ch. 206, L. 1963; amd. Sec. 190, Ch. 316, L. 1974; R.C.M. 1947, 53-702(3); amd. Sec. 16, Ch. 421, L. 1979.

Cross-References

Certificates of ownership, Title 61, ch. 3, part 2.

61-1-311. Operator. "Operator" means a person who is in actual physical control of a motor vehicle.

History: En. Sec. 1, Ch. 204, L. 1951; amd. Sec. 1, Ch. 30, L. 1967; R.C.M. 1947, 53-418(9); amd. Sec. 17, Ch. 421, L. 1979.

Cross-References

Operators to be licensed, 61-5-102.

61-1-312. Repealed. Sec. 39, Ch. 443, L. 1987.

History: En. Sec. 4, Ch. 267, L. 1947; Sec. 31-120, R.C.M. 1947; R.C.M. 1947, 31-120(c).

61-1-313. Nonresident. "Nonresident" means every person who is not a resident of this state.

History: En. Sec. 5, Ch. 267, L. 1947; R.C.M. 1947, 31-121.

Cross-References

Residence — rules for determining, 1-1-215.

61-1-314. Dealer. (1) "Dealer" means:

(a) a person, firm, association, or corporation that, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, accepting on consignment, or acting as a broker of new motor vehicles or used motor vehicles for which certificates of ownership have not been issued and that are not registered in the name of the person, firm, association, or corporation and for whom a dealer's license is required under chapter 4 of this title;

(b) an owner of real property who allows more than three new or used motor vehicles not titled in the property owner's or the seller's name to be offered for sale on the property during 1 calendar year unless the property is leased to a motor vehicle dealer licensed under 61-4-101 and the vehicles offered for sale are bona fide units of the licensed dealer's inventory; or

(c) an owner of a motor vehicle that is offered for sale and is displayed on real property in which the motor vehicle owner does not have a legal interest, and the primary purpose for displaying the motor vehicle on the real property is to effect the sale of the motor vehicle.

(2) The term "dealer" does not include the following:

(a) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;

(b) employees of the persons included in subsection (2)(a) when engaged in the specific performance of their duties as employees;

(c) public officers while performing or in the operation of their duties;

(d) a motor vehicle owner who obtains the written consent of the real property owner, lessee, or agent of the owner or lessee on whose property the motor vehicle is displayed and who posts the written consent or a copy of the written consent in the front or rear window of the motor vehicle; or

(e) a person who attempts to effect a sale of the person's motor vehicle by displaying the motor vehicle on a public street or public area that abuts real property in which the person has a legal interest.

History: **(1)En. Sec. 2, Ch. 144, L. 1937; Sec. 51-202, R.C.M. 1947; (2)En. 51-609 by Sec. 1, Ch. 381, L. 1977; Sec. 51-609, R.C.M. 1947; (3)En. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R.C.M. 1921; re-en. Sec. 1763, R.C.M. 1935; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965; Sec. 53-133, R.C.M. 1947; R.C.M. 1947, 51-609(2), 53-133(part); amd. Sec. 18, Ch. 421, L. 1979; amd. Sec. 1, Ch. 383, L. 1991; amd. Sec. 73, Ch. 10, L. 1993; amd. Sec. 1, Ch. 231, L. 1997; amd. Sec. 11, Ch. 409, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 409 in (1)(a) after "exchanging" inserted "accepting on consignment", after "vehicles" substituted "for which certificates of ownership have not been issued and that are not registered in the name of the person, firm, association, or corporation and for whom a dealer license is required under chapter 4 of this title" for "or both, and that qualifies for issuance of a dealer's license under 61-4-101 through 61-4-105"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

Cross-References

Motor vehicle dealers, Title 61, ch. 4, part 1.

61-1-315. Trailer dealer. "Trailer dealer" means any person, firm, or corporation engaged in whole or in part in the business of buying or selling trailers or semitrailers, with facilities for displaying one or more trailers or semitrailers.

History: **En. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R.C.M. 1921; re-en. Sec. 1763, R.C.M. 1935; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965; R.C.M. 1947, 53-133(h); amd. Sec. 19, Ch. 421, L. 1979.**

Cross-References

Trailer defined, 61-1-111.

Semitrailer defined, 61-1-112.

61-1-316. Manufacturer. The term "manufacturer" includes any person, firm, corporation, or association engaged in the manufacture of motor vehicles, trailers, or semitrailers as a regular business.

History: **En. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R.C.M. 1921; re-en. Sec. 1763, R.C.M. 1935; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965; R.C.M. 1947, 53-133(part); amd. Sec. 20, Ch. 421, L. 1979.**

Cross-References

Licensing of new motor vehicle manufacturers, Title 61, ch. 4, part 2.

61-1-317. Railroad. "Railroad" means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

History: **En. Sec. 7, Ch. 263, L. 1955; R.C.M. 1947, 32-2107(a).**

Cross-References

Rail transportation, Title 60, ch. 11.

Railroads, Title 69, ch. 14.

61-1-318. Broker. "Broker" means a person engaged in the business of offering to procure or procuring motor vehicles or who represents to the public through solicitation, advertisement, or otherwise that the person is one who offers to procure or procures motor vehicles by negotiating purchases, contracts, sales, or exchanges and who does not store, display, or take ownership of any vehicles for the purpose of selling vehicles.

History: **En. Sec. 1, Ch. 393, L. 1989; amd. Sec. 5, Ch. 482, L. 1993.**

Cross-References

Sales and distribution of motor vehicles, Title 61, ch. 4.

Application for dealer's license, 61-4-101.

61-1-319. Wholesaler. "Wholesaler" means a person, firm, partnership, association, or corporation who for a commission or with intent to make a profit or gain of money or other thing of value sells, exchanges, or attempts to negotiate a sale or exchange of an interest in a used motor vehicle, recreational vehicle, trailer, semitrailer, special mobile equipment, motorcycle, or quadricycle only to motor vehicle dealers and auto auctions licensed under this part.

History: En. Sec. 9, Ch. 383, L. 1991.

61-1-320. Motor carrier defined. "Motor carrier" means a person or corporation, or its lessees, trustees, or receivers appointed by a court, operating motor vehicles upon a public highway in this state for the transportation of property for hire on a commercial basis. The term does not include motor carriers regulated under Title 69, chapter 12.

History: En. Sec. 4, Ch. 358, L. 1995.

61-1-321. Established place of business. (1) "Established place of business" means the geographic location upon which a permanent building is located that is actually occupied either continuously or at regular periods by a dealer. A building is actually occupied by a dealer if the dealer's books and records are kept in the building and, except for approved off-premises sales, the dealer's business is transacted within the building.

(2) A dealer's established place of business may also include the geographic location of one or more physical lots upon which vehicles are displayed for sale, as long as the requirements of 61-4-101(4)(d) regulating the distance between display lots and the recordkeeping building are met.

(3) The geographic location of the permanent building actually occupied by the dealer or the geographic location of the physical lots upon which vehicles are displayed for sale may be identified by street address, legal description, or other reasonably identifiable description, as prescribed by the department.

History: En. Sec. 1, Ch. 409, L. 1999.

Compiler's Comments

Effective Date: Section 33(2), Ch. 409, L. 1999, provided that this section is effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

Part 4
Traffic Control

Part Cross-References

Municipal trafficways and public grounds, Title 7, ch. 14, part 41.

61-1-401. Traffic. "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel.

History: En. Sec. 20, Ch. 263, L. 1955; R.C.M. 1947, 32-2120.

61-1-402. Traffic-control signal. "Traffic-control signal" means any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

History: En. Sec. 19, Ch. 263, L. 1955; amd. Sec. 1, Ch. 148, L. 1975; R.C.M. 1947, 32-2119(b).

Cross-References

Traffic-control devices, Title 61, ch. 8, part 2.

61-1-403. Official traffic-control devices. "Official traffic-control devices" means all signs, signals, markings, and devices not inconsistent with this title, placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic. For the purpose of chapter 8, part 2, of this title, the term also includes "flag person" as defined in 61-1-411.

History: En. Sec. 19, Ch. 263, L. 1955; amd. Sec. 1, Ch. 148, L. 1975; R.C.M. 1947, 32-2119(a); amd. Sec. 21, Ch. 421, L. 1979.

Cross-References

Traffic-control devices, Title 61, ch. 8, part 2.

61-1-404. Railroad sign or signal. "Railroad sign" or "railroad signal" means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

History: En. Sec. 19, Ch. 263, L. 1955; amd. Sec. 1, Ch. 148, L. 1975; R.C.M. 1947, 32-2119(c).

Cross-References

Highway crossing railroad, 60-4-110.

Railroad highway crossings, Title 69, ch. 14, part 6.

61-1-405. Safety zone. "Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

History: En. Sec. 17, Ch. 263, L. 1955; R.C.M. 1947, 32-2117.

Cross-References

Crosswalk, 61-1-209.

61-1-406. Right-of-way. "Right-of-way" means the privilege of the immediate use of the roadway.

History: En. Sec. 21, Ch. 263, L. 1955; R.C.M. 1947, 32-2121.

Cross-References

Vehicle approaching or entering intersection, 61-8-339.

61-1-407. Stop, stopping, standing, and parking. (1) "Stop", when required, means complete cessation from movement.

(2) "Stop", "stopping", or "standing", when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer, highway patrol officer, or traffic-control sign or signal.

(3) "Parking", when prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

History: En. Sec. 21.1, Ch. 263, L. 1955; R.C.M. 1947, 32-2122; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Municipal parking, Title 7, ch. 14, part 45.

Parking commissions, Title 7, ch. 14, part 46.

Offstreet parking facilities, Title 7, ch. 14, part 47.

Stopping, standing, and parking regulations, 61-8-353 through 61-8-356.

61-1-408. Business district. "Business district" means the territory contiguous to and including a highway when within any 600 feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings, railroad stations, and public buildings which occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

History: En. Sec. 18, Ch. 263, L. 1955; R.C.M. 1947, 32-2118(a).

Cross-References

Highway encroachments, Title 60, ch. 6.

Turning movements and required signals, 61-8-336.

61-1-409. Residence district. "Residence district" means the territory contiguous to and including a highway not comprising a business district when the property on such highway for a distance of 300 feet or more is in the main improved with residences or residences and buildings in use for business.

History: En. Sec. 18, Ch. 263, L. 1955; R.C.M. 1947, 32-2118(b).

61-1-410. Urban district. "Urban district" means the territory contiguous to and including any street which is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than 100 feet for a distance of one-fourth mile or more.

History: En. Sec. 21.2, Ch. 263, L. 1955; R.C.M. 1947, 32-2123(c).

Cross-References

Turning movements and required signals, 61-8-336.

61-1-411. Flag person. "Flag person" means any person who directs, controls, or alters the normal flow of vehicular traffic upon a street or highway as a result of a vehicular traffic hazard then present on that street or highway. This person, except a uniformed traffic enforcement officer exercising his duty as a result of a planned vehicular traffic hazard, shall be equipped as required by the rules of the Montana department of transportation.

History: En. Sec. 19, Ch. 263, L. 1955; amd. Sec. 1, Ch. 148, L. 1975; R.C.M. 1947, 32-2119(d); amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Flagger escorts, 60-7-204.

61-1-412. Flag vehicle. "Flag vehicle" means any vehicle equipped as required by law or Montana department of transportation regulations to warn or guide vehicular traffic. When not being operated as a flag vehicle, signs shall be removed.

History: En. Sec. 19, Ch. 263, L. 1955; amd. Sec. 1, Ch. 148, L. 1975; R.C.M. 1947, 32-2119(e); amd. Sec. 3, Ch. 512, L. 1991.

61-1-413. Funeral escort vehicle. "Funeral escort vehicle" means a motor vehicle properly equipped pursuant to 61-8-381.

History: En. Sec. 2, Ch. 338, L. 1991.

61-1-414. Funeral lead vehicle. "Funeral lead vehicle" means a motor vehicle, including a funeral hearse, properly equipped pursuant to 61-8-381 leading and facilitating the movement of a funeral procession.

History: En. Sec. 3, Ch. 338, L. 1991.

61-1-415. Funeral procession. "Funeral procession" means two or more motor vehicles, one of which is carrying the remains of a deceased person, in the daylight hours, including a funeral lead vehicle and a funeral escort vehicle.

History: En. Sec. 4, Ch. 338, L. 1991.

Part 5
Miscellaneous

61-1-501. Mobile home or housetrailer. "Mobile home" or "housetrailer" means a trailer or a semitrailer that is designed, constructed, and equipped as a dwelling place, living abode, or sleeping place (either permanently or temporarily) and is equipped for use as a conveyance on streets and highways or a trailer or semitrailer whose chassis and exterior shell is designed and constructed for use as a housetrailer but that is used permanently or temporarily for the advertising, sales, display, or promotion of merchandise or services or for any commercial purpose except the transportation of property for hire or the transportation of property for distribution by a private carrier.

History: En. Sec. 5, Ch. 263, L. 1955; amd. Sec. 1, Ch. 204, L. 1957; R.C.M. 1947, 32-2105(d); amd. Sec. 6, Ch. 482, L. 1993.

Cross-References

Retail installment sales — manufactured structure defined, 31-1-202.

Occupied structure defined, 45-2-101.

Riding in housetrailers, 61-8-367.

61-1-502. Gross vehicle weight. "Gross vehicle weight" means the weight of a vehicle without load plus the weight of any load on the vehicle.

History: En. Sec. 9, Ch. 263, L. 1955; R.C.M. 1947, 32-2109; amd. Sec. 2, Ch. 53, L. 1995.

Cross-References

Gross vehicle weight licensing requirements, Title 61, ch. 10, part 2.

61-1-503. Suspension. "Suspension" means that the driver's license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn, but only during the period of such suspension.

History: En. Sec. 8, Ch. 267, L. 1947; amd. Sec. 1, Ch. 110, L. 1961; R.C.M. 1947, 31-124(a).

Cross-References

Revocation, suspension, or cancellation of licenses, Title 61, ch. 5, part 2.

61-1-504. Revocation. "Revocation" means that the driver's license and privilege to drive a motor vehicle on the public highways are terminated and may not be renewed or restored. An application for a new license may be presented and acted upon by the department after the expiration of the period of the revocation.

History: En. Sec. 8, Ch. 267, L. 1947; amd. Sec. 1, Ch. 110, L. 1961; R.C.M. 1947, 31-124(b); amd. Sec. 22, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Revocation, suspension, or cancellation of licenses, Title 61, ch. 5, part 2.

61-1-505. Cancellation. "Cancellation" means that a driver's license is annulled and terminated because of some error or defect or because the licensee is no longer entitled to such license, but the cancellation of a license is without prejudice and application for a new license may be made at any time after such cancellation.

History: En. Sec. 8, Ch. 267, L. 1947; amd. Sec. 1, Ch. 110, L. 1961; R.C.M. 1947, 31-124(c).

Cross-References

Revocation, suspension, or cancellation of licenses, Title 61, ch. 5, part 2.

61-1-506. Explosives. "Explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, friction, concussion, percussion, or detonator of any part of the compound or mixture may cause such sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

History: En. Sec. 8, Ch. 263, L. 1955; R.C.M. 1947, 32-2108(a).

Cross-References

Administrative rules governing transportation and storage of explosives — Department of Justice, 50-3-102.

Vehicles transporting explosives, 61-9-413.

61-1-507. Flammable liquid. "Flammable liquid" means any liquid which has a flash point of 70 degrees F or less as determined by a Tagliabue or equivalent closed cup test device.

History: En. Sec. 8, Ch. 263, L. 1955; R.C.M. 1947, 32-2108(b).

Cross-References

Regulation of petroleum products, Title 82, ch. 15.

61-1-508. Registration. "Registration" means, as used in part 1, chapter 6, registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles.

History: En. Sec. 1, Ch. 204, L. 1951; amd. Sec. 1, Ch. 30, L. 1967; R.C.M. 1947, 53-418(13).

Cross-References

Registration, Title 61, ch. 3, part 3.

61-1-509. Certificate of ownership. "Certificate of ownership" means the certificate issued by the department to the transferee upon a transfer of ownership of a motor vehicle.

History: En. Sec. 23, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Certificates of ownership, Title 61, ch. 3, part 2.

61-1-510. Declared weight. "Declared weight" means the total unladen weight of a vehicle plus the weight of the maximum load to be carried on the vehicle as stated by the registrant in the application for registration.

History: En. Sec. 8, Ch. 88, L. 1995.

61-1-511. For hire defined. "For hire" means an action performed for remuneration of any kind, whether paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

History: En. Sec. 3, Ch. 358, L. 1995.

Cross-References

Classification of commercial driver's license, 61-5-112.

61-1-512. Ignition interlock device — definition. "Ignition interlock device" means ignition equipment that:

(1) analyzes the breath to determine blood alcohol concentration;

(2) is approved by the department pursuant to 61-8-441; and

(3) is designed to prevent a motor vehicle from being operated by a person who has consumed a specific amount of an alcoholic beverage.

History: En. Sec. 1, Ch. 107, L. 1997.

61-1-513. Manufactured home. (1) "Manufactured home" means a residential dwelling built in a factory in accordance with the United States department of housing and urban development code and the federal Manufactured Home Construction and Safety Standards.

(2) A manufactured home does not include a mobile home, as defined in 61-1-501 or 15-1-101, a housetrailer, as defined in 61-1-501, or a mobile home or housetrailer constructed before the federal Manufactured Home Construction and Safety Standards went into effect on June 15, 1976.

History: En. Sec. 1, Ch. 200, L. 1997.

61-1-514. Retail sale. (1) "Retail sale" means the sale of a new motor vehicle or used motor vehicle, a recreational vehicle, a trailer, a motorcycle, a quadricycle, or special mobile equipment by a dealer to a person for purposes other than resale.

(2) For purposes of chapter 4, part 1, of this title, retail sale does not mean a sale that is the result of a transfer between a dealer, wholesaler, or auto auction and another dealer, wholesaler, or auto auction.

History: En. Sec. 3, Ch. 409, L. 1999.

Compiler's Comments

Effective Date: Section 33(2), Ch. 409, L. 1999, provided that this section is effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

CHAPTER 2

HIGHWAY SAFETY

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Chapter Cross-References

Highway code, Title 60, ch. 1.

Commercial motor vehicle safety, Title 61, ch. 8, part 8.

Part 1

Traffic Safety Program

61-2-101. Purpose. To promote public safety, health, and welfare and to reduce traffic deaths, injuries, and property losses resulting from traffic accidents, it is in the public interest to establish a highway traffic safety program and provide for its administration. It is in the public interest to implement, modernize, and improve the following traffic safety activities: driver performance, including but not limited to driver education, driver testing to determine proficiency to operate motor vehicles; driver examinations, both physical and mental; driver licensing; pedestrian performance; establish an effective accident record system, including traffic accident investigation to determine the probable cause of accidents, injuries, and deaths; improve and establish a system of vehicle registration, vehicle operation, and vehicle inspection; assist in the improving of highway design and maintenance, including lighting, markings, and surface treatment to improve safety; establish an effective traffic control system; promote the adoption of uniform vehicle laws; provide for surveillance of traffic for detection and correction of high or potentially high accident locations; establish emergency services, including but not limited to communications, medical or mechanical assistance, and ambulance service for injured persons; and establish an effective compilation and storage program of reports and records through electronic data processing.

History: En. Sec. 1, Ch. 177, L. 1967; amd. Sec. 74, Ch. 348, L. 1974; R.C.M. 1947, 32-4601.

Cross-References

Traffic regulation, Title 61, ch. 8.

61-2-102. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Department" means the department of transportation.

(2) "Highway traffic safety program" means a program designed to reduce traffic accidents, deaths, injuries to persons, and damage to property. The program must be in accordance with uniform standards established by the secretary of commerce of the United States under Title 23, U.S.C., as amended. Nothing in this part restricts or prohibits the establishment of standards that enlarge or implement the federal standards.

(3) "Political subdivisions" means each county, incorporated city or town, and school district within the boundaries of the state.

History: En. Sec. 2, Ch. 177, L. 1967; amd. Sec. 75, Ch. 348, L. 1974; amd. Sec. 34, Ch. 213, L. 1975; R.C.M. 1947, 32-4602; amd. Sec. 8, Ch. 274, L. 1981; amd. Sec. 2, Ch. 538, L. 1995.

61-2-103. Duties. (1) The governor is responsible for the administration of the highway traffic safety program. The governor may contract and do all other things necessary to secure the full benefits available to this state under the Federal Highway Safety Act of 1966 and, in so doing, may cooperate with federal and state agencies, private and public organizations, and individuals to effectuate the purposes of that enactment and all amendments to it. The governor may appoint an administrator of the highway traffic safety program to carry out the governor's responsibilities under this part. For purposes of participation in the Federal Highway Safety Act of 1966, the governor shall designate the superintendent of public instruction as the state agency responsible for all aspects of federally assisted driver education and safety programs in the public schools, including the approval of the programs, certification of teachers, and the acceptance, allocation, and expenditure of funds for driver education in accordance with applicable federal laws and regulations. Nothing in this part interferes with the provisions of Title 20, chapter 7, part 5, or 20-9-603.

(2) The department shall:

(a) advise and assist the governor in all matters of highway safety and establish comprehensive training programs, including establishment and regulation of driver training schools, certification of the schools and instructors, and establishment of adult training and retraining programs;

(b) develop and procure practice driving facilities, simulators, and other teaching aids for school and driver training use; and

(c) establish a continuing and adequate research program designed to determine the causes of accidents and effect a program of prevention.

(3) The department of justice shall:

(a) establish a uniform system of driver licensing, including mental and physical standards; and

(b) prescribe and establish safety regulations for motor vehicles and operators.

History: En. Sec. 5, Ch. 177, L. 1967; amd. Sec. 76, Ch. 348, L. 1974; amd. Sec. 35, Ch. 213, L. 1975; R.C.M. 1947, 32-4605; amd. Sec. 8, Ch. 274, L. 1981; amd. Sec. 1, Ch. 126, L. 1991; amd. Sec. 3, Ch. 538, L. 1995.

Cross-References

Powers and duties of Governor, 2-15-201.

Superintendent of Public Instruction, 2-15-701.

Insurance discount for mature driver completing program, 33-16-222.

61-2-104. Funds. The governor and the department may enter into contracts with the federal government to secure maximum federal appropriation. At least 40% of all federal funds received by the state shall be spent by the political subdivisions of the state in carrying out local approved highway traffic safety programs. Except as provided in this part, the governor may accept all gifts, money, and funds to implement the purposes of this part. The expenditure of funds, exclusive of the federal appropriation, shall be maintained at a level which shall not fall below the average level of the expenditures for the last 2 full fiscal years preceding July 1, 1966, as determined by the expenditures of state and political subdivisions.

History: En. Sec. 6, Ch. 177, L. 1967; amd. Sec. 77, Ch. 348, L. 1974; R.C.M. 1947, 32-4606.

Cross-References

Federal revenue and endowments, Title 17, ch. 3.

Highways — distribution and apportionment of highway funds, Title 60, ch. 3.

61-2-105. Local programs. Except as provided in this part, all highway traffic safety programs of political subdivisions must be approved by the governor and no funds may be spent unless his approval is obtained. All local and state officials shall cooperate with the governor and department to accomplish the purposes of this part. The governor shall administer the highway traffic safety programs of this state and its political subdivisions in accordance with this part and federal rules.

History: En. Sec. 7, Ch. 177, L. 1967; amd. Sec. 78, Ch. 348, L. 1974; R.C.M. 1947, 32-4607.

Cross-References

Limits on disbursements and expenditures, Title 17, ch. 8, part 1.

61-2-106. County drinking and driving prevention program. (1) The governing body of a county may appoint a task force to study the problem of alcohol-related traffic accidents and recommend a program designed to:

(a) prevent driving while under the influence of alcohol;

(b) reduce alcohol-related traffic accidents; and

(c) educate the public on the dangers of driving after consuming alcoholic beverages or other chemical substances that impair judgment or motor functions.

(2) A task force appointed under subsection (1) shall conduct its study and submit its recommendations within 6 months from the date it was appointed. Task force meetings are open to the public. The task force shall give notice by publication in the community meeting announcement section of a newspaper of general circulation in the county.

(3) The county governing body may by resolution adopt the recommendations of the task force appointed under subsection (1). The proposed program must be approved by the governor as provided in 61-2-105.

(4) The chairman of the task force shall submit to the county governing body:

(a) a budget and a financial report for each fiscal year; and

(b) an annual report containing but not limited to:

(i) an evaluation of the effectiveness of the program;

(ii) the number of arrests and convictions in the county for driving under the influence of alcohol and the sentences imposed for these convictions;

(iii) the number of alcohol-related traffic accidents in the county; and

(iv) any other information requested by the county governing body or considered appropriate by the task force.

(5) A copy of the annual report may be submitted to the department.

History: En. Sec. 1, Ch. 643, L. 1987; amd. Sec. 2, Ch. 751, L. 1991; amd. Sec. 1, Ch. 436, L. 1993.

Cross-References

Driving under influence of alcohol or drugs, Title 61, ch. 8, part 4.

61-2-107. License reinstatement fee to fund county drinking and driving prevention programs. (1) Notwithstanding the provisions of any other law of the state, a driver's license that has been suspended or revoked under 61-5-205 or 61-8-402 must remain suspended or revoked until the driver has paid to the department a fee of $100 in addition to any other fines, forfeitures, and penalties assessed as a result of conviction for a violation of the traffic laws of the state.

(2) The department shall deposit the fees collected under subsection (1) in the general fund. One-half of the fees must be appropriated and used for funding county drinking and driving prevention programs as provided in 61-2-108.

History: En. Sec. 2, Ch. 643, L. 1987; amd. Sec. 1, Ch. 55, L. 1989; amd. Sec. 1, Ch. 751, L. 1991; amd. Sec. 1, Ch. 5, Sp. L. January 1992; amd. Sec. 1, Ch. 492, L. 1993; amd. Sec. 1, Ch. 2, Sp. L. November 1993; amd. Sec. 63, Ch. 18, L. 1995;. amd. Sec. 53, Ch. 509, L. 1995.

61-2-108. Funding allocation for programs to prevent or reduce drinking and driving. If the county in which the violation or violations occurred has initiated and maintained a drinking and driving prevention program as provided in 61-2-106, the department shall transmit the county portion of the proceeds of the license reinstatement fees collected in that county to the county treasurer, as provided in 61-2-107(2), at the end of each quarter.

History: En. Sec. 3, Ch. 643, L. 1987; amd. Sec. 3, Ch. 751, L. 1991; amd. Sec. 2, Ch. 5, Sp. L. January 1992; amd. Sec. 245, Ch. 42, L. 1997.

Part 2
Vehicle Equipment Safety

Part Cross-References

Vehicle equipment, Title 61, ch. 9.

61-2-201. Vehicle Equipment Safety Compact. This part shall be known and may be cited as the "Vehicle Equipment Safety Compact".

Article I. Findings and Purposes

(1) The party states find that:

(a) accidents and deaths on their streets and highways present a very serious human and economic problem with a major deleterious effect on the public welfare;

(b) there is a vital need for the development of greater interjurisdictional cooperation to achieve the necessary uniformity in the laws, rules, regulations, and codes relating to vehicle equipment, and to accomplish this by such means as will minimize the time between the development of demonstrably and scientifically sound safety features and their incorporation into vehicles.

(2) The purposes of this compact are to: (a) promote uniformity in regulation of and standards for equipment;

(b) secure uniformity of law and administrative practice in vehicular regulation and related safety standards to permit incorporation of desirable equipment changes in vehicles in the interest of greater traffic safety;

(c) provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in subsection (1) of this article.

(3) It is the intent of this compact to emphasize performance requirements and not to determine the specific detail of engineering in the manufacture of vehicles or equipment except to the extent necessary for the meeting of such performance requirements.

Article II. Definitions

As used in this compact:

(1) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(2) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(3) "Equipment" means any part of a vehicle or any accessory for use thereon which affects the safety of operation of such vehicle or the safety of the occupants.

Article III. The Commission

(1) There is hereby created an agency of the party states to be known as the "Vehicle Equipment Safety Commission", hereinafter called the commission. The commission shall be composed of one commissioner from each party state who shall be appointed, serve, and be subject to removal in accordance with the laws of the state which he represents. If authorized by the laws of his party state, a commissioner may provide for the discharge of his

duties and the performance of his functions on the commission, either for the duration of his membership or for any lesser period of time, by an alternate. No such alternate shall be entitled to serve unless notification of his identity and appointment shall have been given to the commission in such form as the commission may require. Each commissioner, and each alternate when serving in the place and stead of a commissioner, shall be entitled to be reimbursed by the commission for expenses actually incurred in attending commission meetings or while engaged in the business of the commission.

(2) The commissioners shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, are present.

(3) The commission shall have a seal.

(4) The commission shall elect annually, from among its members, a chairman, a vice-chairman, and a treasurer. The commission may appoint an executive director and fix his duties and compensation. Such executive director shall serve at the pleasure of the commission, and together with the treasurer shall be bonded in such amount as the commission shall determine. The executive director also shall serve as secretary. If there be no executive director, the commission shall elect a secretary in addition to the other officers provided by this subdivision.

(5) Irrespective of the civil service, personnel, or other merit system laws of any of the party states, the executive director with the approval of the commission, or the commission if there be no executive director, shall appoint, remove, or discharge such personnel as may be necessary for the performance of the commission's functions, and shall fix the duties and compensation of such personnel.

(6) The commission may establish and maintain independently or in conjunction with any one or more of the party states a suitable retirement system for its full time employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivor's insurance provided that the commission takes such steps as may be necessary pursuant to the laws of the United States to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(7) The commission may borrow, accept, or contract for the services of personnel from any party state, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party states or their subdivisions.

(8) The commission may accept for any of its purposes and functions under this compact any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency and may receive, utilize, and dispose of the same.

(9) The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

(10) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states. The bylaws shall provide for appropriate notice to the commissioners of all commission meetings and hearings and the business to be transacted at such meetings or hearings. Such notice shall also be given to such agencies or officers of each party state as the laws of such party state may provide.

(11) The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been issued by the commission. The commission may make such additional reports as it may deem desirable.

Article IV. Research and Testing

The commission shall have power to:

(1) collect, correlate, analyze, and evaluate information resulting or derivable from research and testing activities in equipment and related fields;

(2) recommend and encourage the undertaking of research and testing in any aspect of equipment or related matters when, in its judgment, appropriate or sufficient research or testing has not been undertaken;

(3) contract for such equipment research and testing as one or more governmental agencies may agree to have contracted for by the commission, provided that such governmental agency or agencies shall make available the funds necessary for such research and testing;

(4) recommend to the party states changes in law or policy with emphasis on uniformity of laws and administrative rules, regulations, or codes which would promote effective governmental action or coordination in the prevention of equipment-related highway accidents or the mitigation of equipment-related highway safety problems.

Article V. Vehicular Equipment

(1) In the interest of vehicular and public safety, the commission may study the need for or desirability of the establishment of or changes in performance requirements or restrictions for any item of equipment. As a result of such study, the commission may publish a report relating to any item or items of equipment, and the issuance of such a report shall be a condition precedent to any proceedings or other action provided or authorized by this article. No less than 60 days after the publication of a report containing the results of such study, the commission upon due notice shall hold a hearing or hearings at such place or places as it may determine.

(2) Following the hearing or hearings provided for in subsection (1) of this article, and with due regard for standards recommended by appropriate professional and technical associations and agencies, the commission may issue rules, regulations, or codes embodying performance requirements or restrictions for any item or items of equipment covered in the report, which in the opinion of the commission will be fair and equitable and effectuate the purposes of this compact.

(3) Each party state obligates itself to give due consideration to any and all rules, regulations, and codes issued by the commission and hereby declares its policy and intent to be the promotion of uniformity in the laws of the several party states relating to equipment.

(4) The commission shall send prompt notice of its action in issuing any rule, regulation, or code pursuant to this article to the appropriate motor vehicle agency of each party state and such notice shall contain the complete text of the rule, regulation, or code.

(5) If the constitution of a party state requires, or if its statutes provide, the approval of the legislature by appropriate resolution or act may be made a condition precedent to the taking effect in such party state of any rule, regulation, or code. In such event, the commissioner of such party state shall submit any commission rule, regulation, or code to the legislature as promptly as may be in lieu of administrative acceptance or rejection thereof by the party state.

(6) Except as otherwise specifically provided in or pursuant to subsections (5) and (7) of this article, the appropriate motor vehicle agency of a party state shall in accordance with its constitution or procedural laws adopt the rule, regulation, or code within 6 months of the sending of the notice and, upon such adoption, the rule, regulation, or code shall have the force and effect of law therein.

(7) The appropriate motor vehicle agency of a party state may decline to adopt a rule, regulation, or code issued by the commission pursuant to this article if such agency specifically finds, after public hearing on due notice, that a variation from the commission's rule, regulation, or code is necessary to the public safety, and incorporates in such finding the reasons upon which it is based. Any such finding shall be subject to review by such procedure for review of administrative determinations as may be applicable pursuant to the laws of the party state. Upon request, the commission shall be furnished with a copy of the transcript of any hearings held pursuant to this subsection.

Article VI. Finance

(1) The commission shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(2) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations under any such budget shall be apportioned among the party states as follows: one-third in equal shares and the remainder in proportion to the number of motor vehicles registered in each party state. In determining the number of such registrations, the commission may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning vehicular registrations.

(3) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds

available to it under Article III(8) of this compact, provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under Article III(8) hereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(4) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its rules. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual reports of the commission.

(5) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(6) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VII. Conflict of Interest

(1) The commission shall adopt rules and regulations with respect to conflict of interest for the commissioners of the party states, and their alternates, if any, and for the staff of the commission and contractors with the commission to the end that no member or employee or contractor shall have a pecuniary or other incompatible interest in the manufacture, sale, or distribution of motor vehicles or vehicular equipment or in any facility or enterprise employed by the commission or on its behalf for testing, conduct of investigations, or research. In addition to any penalty for violation of such rules and regulations as may be applicable under the laws of the violator's jurisdiction of residence, employment, or business, any violation of a commission rule or regulation adopted pursuant to this article shall require the immediate discharge of any violating employee and the immediate vacating of membership, or relinquishing of status as a member on the commission by any commissioner or alternate. In the case of a contractor, any violation of any such rule or regulation shall make any contract of the violator with the commission subject to cancellation by the commission.

(2) Nothing contained in this article shall be deemed to prevent a contractor for the commission from using any facilities subject to his control in the performance of the contract even though such facilities are not devoted solely to work of or done on behalf of the commission, or to prevent such a contractor from receiving remuneration or profit from the use of such facilities.

Article VIII. Advisory and Technical Committees

The commission may establish such advisory and technical committees as it may deem necessary, membership on which may include private citizens and public officials, and may cooperate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities.

Article IX. Entry Into Force and Withdrawal

(1) This compact shall enter into force when enacted into law by any six or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(2) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 1 year after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article X. Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 109, L. 1965; R.C.M. 1947, 32-21-166.

61-2-202. Legislative findings on equipment safety. The legislature finds that:

(1) the public safety necessitates the continuous development, modernization, and implementation of standards and requirements of law relating to vehicle equipment, in accordance with expert knowledge and opinion;

(2) the public safety further requires that such standards and requirements be uniform from jurisdiction to jurisdiction, except to the extent that specific and compelling evidence supports variation;

(3) the department, acting upon recommendations of the vehicle equipment safety commission and pursuant to the Vehicle Equipment Safety Compact, provides a just, equitable, and orderly means of promoting the public safety in the manner and within the scope contemplated by this part.

History: En. Sec. 2, Ch. 109, L. 1965; R.C.M. 1947, 32-21-167; amd. Sec. 1, Ch. 503, L. 1985.

61-2-203. Equipment requirements continued in force. Provisions of chapter 9 of this title shall continue to be in effect. The approval of the legislature is a condition precedent to the taking effect of any rule, regulation, or code that may be adopted by the commission.

History: En. Sec. 3, Ch. 109, L. 1965; R.C.M. 1947, 32-21-168; amd. Sec. 24, Ch. 421, L. 1979.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

61-2-204. State commissioner on vehicle equipment safety commission. Notwithstanding section 1, Chapter 272, Laws of 1971, the commissioner of this state on the vehicle equipment safety commission is the highway patrol chief who shall serve during his continuance as such officer. The commissioner appointed pursuant to this section may designate an alternate from among the officers and employees of his agency to serve in his place on the vehicle equipment safety commission. Subject to the provisions of the compact and bylaws of the vehicle equipment safety commission, the authority and responsibilities of the alternate are as determined by the commissioner designating him.

History: En. Sec. 4, Ch. 109, L. 1965; R.C.M. 1947, 32-21-169; amd. Sec. 25, Ch. 421, L. 1979.

Cross-References

Highway Patrol Chief, Title 44, ch. 1, part 2.

61-2-205. Retirement of equipment safety commission employees. The public employees retirement board of Montana may make an agreement with the vehicle equipment safety commission for the coverage of said commission's employees pursuant to Article III(6) of the compact. Any such agreement, as nearly as may be, shall provide for arrangements similar to those available to the employees of this state and shall be subject to amendment or termination in accordance with its terms.

History: En. Sec. 5, Ch. 109, L. 1965; R.C.M. 1947, 32-21-170.

Cross-References

Administration of PERS, Title 19, ch. 3, part 3.

61-2-206. Governmental agencies to cooperate with equipment safety commission. Within appropriations available therefor, the departments, agencies, and officers of the government of this state may cooperate with and assist the vehicle equipment safety commission within the scope contemplated by Article III(8) of the compact. The departments, agencies, and officers of the government of this state are authorized generally to cooperate with said commission.

History: En. Sec. 6, Ch. 109, L. 1965; R.C.M. 1947, 32-21-171.

61-2-207. Documents filed and notices given by equipment safety commission. Filing of documents as required by Article III(10) of the compact shall be with the department. Any and all notices required by commission bylaws to be given pursuant to Article III(10) of the compact shall be given to the commissioner of this state and his alternate.

History: En. Sec. 7, Ch. 109, L. 1965; R.C.M. 1947, 32-21-172; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Duties of Department of Justice — records, 61-3-101.

61-2-208. Equipment safety commission funds. (1) Pursuant to Article VI(1) of the compact, the vehicle equipment safety commission shall submit its budgets to the state budget director.

(2) Pursuant to Article VI(5) of the compact, the department of commerce is hereby empowered and authorized to inspect the accounts of the vehicle equipment safety commission.

History: En. Secs. 5, 9, Ch. 109, L. 1965; R.C.M. 1947, 32-21-173, 32-21-174; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983.

Cross-References

Budget systems and program plans, Title 17, ch. 7, part 1.

61-2-209. Governor as executive head for compact purposes. The term "executive head" as used in Article IX(2) of the compact shall, with reference to this state, mean the governor.

History: En. Sec. 11, Ch. 109, L. 1965; R.C.M. 1947, 32-21-175.

Cross-References

Governor, Title 2, ch. 15, part 2.

Part 3

Driver Improvement Program

61-2-301. Purpose. The toll of accidents, personal injuries, and deaths resulting from the operation of motor vehicles remains a matter of great concern to the legislature. The failure to apply proper driving techniques in the operation of vehicles and improper driving attitudes and habits on the part of operators constitute major factors in a substantial portion of both fatal and nonfatal automobile accidents. Current efforts to improve driver skills, responsibilities, attitudes, and habits have not proved adequate to stem the accident, injury, and death toll. The public interest in the cause of highway safety will be well served by additional methods of driver rehabilitation and improvement and the establishment of programs of rehabilitative instruction, driver improvement, and direction for drivers with poor driving records.

History: En. 31-191 by Sec. 1, Ch. 526, L. 1977; R.C.M. 1947, 31-191.

61-2-302. Establishment of driver rehabilitation and improvement program — participation by offending drivers. (1) The department may establish by administrative rules a driver rehabilitation and improvement program or programs that may consist of classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques.

(2) Official participation in the driver rehabilitation and improvement program is limited to those persons whose license to operate a motor vehicle in the state of Montana is:

(a) subject to suspension or revocation as a result of a violation of the traffic laws of this state or, unless otherwise provided by the sentencing court, a violation of 45-5-624; or

(b) revoked and they have:

(i) completed at least 3 months of a 1-year revocation or, if revocation is for a second or subsequent violation of 61-8-401 or 61-8-406, have provided the department with proof of compliance with the ignition interlock device restriction imposed under 61-5-208; or

(ii) completed 1 year of a 3-year revocation; and

(iii) met the requirements for reobtaining a Montana driver's license.

(3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order that constitutes the basis for any person's participation in the driver rehabilitation and improvement program provided for in this section may be stayed if that person complies with the requirements established for the driver improvement program and meets the eligibility requirements of subsection (2).

(4) In the event that a person's driver's license has been surrendered before the person's selection for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt of the person's agreement to participate in the program.

(5) The stay of enforcement of any suspension or revocation order must be terminated and the order of suspension or revocation enforced if a person declines to participate in the driver rehabilitation and improvement program or fails to meet the attendance or other requirements established for participation in the program.

(6) This part does not create a right to be included in any program established under this part.

(7) The department may establish a schedule of fees that may be charged those persons participating in the driver improvement and rehabilitation program. The fees must be used to help defray costs of maintaining the program.

(8) A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, youth court judge, judge of a district court of the state, or hearing examiner of the department.

(9) The department may issue a restricted probationary license to any person who enrolls and participates in the driver rehabilitation and improvement program. Upon issuance of a probationary license under this section, the licensee is subject to the restrictions set forth on the license.

(10) It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the restrictions imposed on a restricted license issued to the person under this section.

History: En. 31-192 by Sec. 2, Ch. 526, L. 1977; R.C.M. 1947, 31-192; amd. Sec. 1, Ch. 297, L. 1979; amd. Sec. 1, Ch. 444, L. 1985; amd. Sec. 13, Ch. 503, L. 1985; amd. Sec. 7, Ch. 481, L. 1995; amd. Sec. 4, Ch. 107, L. 1997; amd. Sec. 1, Ch. 258, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 258 in (2) after "persons" deleted "who are not subject to an ignition interlock restriction imposed under 61-8-442 and"; and in (2)(b)(i) after "revocation" inserted remainder of subsection concerning second or subsequent offense. Amendment effective October 1, 1999.

Cross-References

When no penalty specified, 46-18-212.

Revocation, suspension, or cancellation of licenses, Title 61, ch. 5, part 2.

Records to be kept by Department of Justice, 61-11-102.

Habitual traffic offenders, Title 61, ch. 11, part 2.

Part 4
Motorcycle Safety Training Program (Renumbered and Repealed. Sec. 8, 10, Ch. 701, L. 1991)

Part Compiler's Comments

Sections Renumbered and Repealed:

61-2-401. Renumbered 20-7-510.
61-2-402. Renumbered 20-7-511.
61-2-403. Renumbered 20-7-512.
61-2-404. Renumbered 20-7-513.
61-2-405. Renumbered 20-7-514.
61-2-406. Repealed. Sec. 8, Ch. 701, L. 1991.

Histories of Repealed Sections:

61-2-406. En. Sec. 6, Ch. 324, L. 1989.

CHAPTER 3

CERTIFICATES OF OWNERSHIP, REGISTRATION, AND TAXATION OF MOTOR VEHICLES

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61-3-737. Situs in state of proportionally registered fleets — collection of taxes and fees.
61-3-738. Deposit and distribution of taxes and fees on proportionally registered fleets.

Chapter Cross-References

Confidential license plates and registrations, Title 44, ch. 4, part 2.

Interstate cooperative agreements for collection of taxes and fees, 60-2-311.

Part 1

General Provisions

61-3-101. Duties of department — records. (1) The department shall keep a record as specified in this section of all motor vehicles, trailers, and semitrailers of every kind, of certificates of registration and ownership of those vehicles, and of all manufacturers and dealers in motor vehicles.

(2) The record must show the following:

(a) the name of the owner, the residence address by street or rural route, town, and county, and the mailing address if different from the residence address;

(b) the name and address of the conditional sales vendor, mortgagee, or other lienholder and the amount due under contract or lien;

(c) the manufacturer of the vehicle;

(d) the manufacturer's designation of the style of the vehicle;

(e) the identifying number;

(f) the year of manufacture;

(g) the character of the motive power and the shipping weight of the vehicle as shown by the manufacturer;

(h) the distinctive license number assigned to the vehicle, if any;

(i) if a truck or trailer, the number of tons' capacity or GVW if imprinted on the manufacturer's identification plate;

(j) except as provided in 61-3-103, the name and complete address of any holder of a perfected security interest in the vehicle; and

(k) other information that may from time to time be found desirable.

(3) The department shall file applications for registration received by it from county treasurers and register the vehicles and the vehicle owners as follows:

(a) under the distinctive license number assigned to the vehicle by the county treasurer;

(b) alphabetically under the name of the owner;

(c) numerically under make and identifying number of the vehicle; and

(d) under another index of registration as the department considers expedient.

(4) The department shall determine the amount of motor vehicle taxes and fees to be collected at the time of registration for each light vehicle subject to tax under 61-3-503 and for each bus, truck having a manufacturer's rated capacity of more than 1 ton, and truck tractor subject to a fee in lieu of tax under 61-3-528 and 61-3-529. The county treasurer shall collect the taxes and fees on each motor vehicle at the time of its registration.

(5) Vehicle registration records and indexes and driver's license records and indexes may be maintained by electronic recording and storage media.

(6) In the case of dealers, the records must show the information contained in the application for a dealer's, wholesaler's, or auto auction license as required by chapter 4, parts 1 and 2, of this title, as well as the distinctive license number assigned to the dealer.

(7) In order to prevent an accumulation of unneeded records and files, regardless of any other statutory requirements, the department may destroy

all records and files that relate to vehicles that have not been registered within the preceding 4 years and that do not have an active lien.

(8) All records must be open to inspection during reasonable business hours, and the department shall furnish any information from the records upon payment by the applicant of the cost of the information requested. Prior to providing the information, the department may require the applicant to provide identification. However, the department may, by rule, reasonably restrict disclosure of information on an owner if the owner has requested in writing that the department not disclose the information or if the demands of individual privacy clearly exceed the merits of public disclosure.

History: En. Sec. 1, Ch. 75, L. 1917; re-en. Sec. 1755, R.C.M. 1921; amd. Sec. 1, Ch. 177, L. 1925; amd. Sec. 1, Ch. 129, L. 1927; amd. Sec. 1, Ch. 181, L. 1929; amd. Sec. 1, Ch. 159, L. 1933; re-en. Sec. 1755, R.C.M. 1935; amd. Secs. 1, 2, Ch. 62, L. 1943; amd. Sec. 1, Ch. 208, L. 1957; amd. Sec. 22, Ch. 177, L. 1965; amd. Sec. 1, Ch. 256, L. 1965; amd. Sec. 1, Ch. 74, L. 1967; amd. Sec. 1, Ch. 115, L. 1969; amd. Sec. 1, Ch. 207, L. 1969; amd. Sec. 1, Ch. 214, L. 1971; amd. Sec. 7, Ch. 343, L. 1977; R.C.M. 1947, 53-101; amd. Sec. 26, Ch. 421, L. 1979; amd. Sec. 1, Ch. 15, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 2, Ch. 555, L. 1985; amd. Sec. 1, Ch. 236, L. 1991; amd. Sec. 2, Ch. 604, L. 1991; amd. Sec. 2, Ch. 724, L. 1991; amd. Sec. 18, Ch. 496, L. 1997; amd. Sec. 12, Ch. 409, L. 1999; amd. Sec. 15, Ch. 416, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 409 in (6) after "dealer's" inserted "wholesaler's, or auto auction" and after "required by" substituted "chapter 4, parts 1 and 2, of this title" for "61-4-101 through 61-4-105"; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 416 in third sentence in (8) after "owner" deleted "or the owner's vehicle" and after "the information" inserted "or if the demands of individual privacy clearly exceed the merits of public disclosure"; and made minor changes in style. Amendment effective October 1, 1999.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

Cities and towns — power to license, 7-21-4205.

Mobile home or housetrailer — transfer of interest, 61-3-207.

Registration of collectors' items, 61-3-411.

Monopolies in motor vehicle financing, Title 61, ch. 4, part 4.

Drivers' licenses, Title 61, ch. 5.

Accidents on highways — reports, Title 61, ch. 7, part 1.

Weight and size regulations, Title 61, ch. 10.

Motor club service companies, Title 61, ch. 12, part 3.

Motor carriers, Title 69, ch. 12.

61-3-102. Repealed. Sec. 1, Ch. 107, L. 1991.

History: En. 53-122.1 by Sec. 3, Ch. 41, L. 1975; R.C.M. 1947, 53-122.1; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 114, Ch. 370, L. 1987.

61-3-103. *(Temporary)* **Filing of security interests — perfection — rights — procedure — fees.** (1) Except as provided in 61-3-109, the department may not file any voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the vehicle encumbered. If the approved notice form is transmitted to the department, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, and the amount of the lien and is signed by the debtor. The department shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the vehicle encumbered. The department shall mail a statement certifying to the filing of a security interest or lien to the secured party. The department shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department shall return the certificate of ownership to the county treasurer in the county in which the vehicle is to be registered. The owner of a motor vehicle is the person entitled to operate and possess the motor vehicle.

(2) A security interest in a motor vehicle held as inventory by a dealer licensed under chapter 4 of this title must be perfected in accordance with Title 30, chapter 9.

(3) Whenever a security interest or lien is filed against a motor vehicle that is subject to two security interests previously perfected under this section, the department shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests need not be endorsed on the certificate.

(4) Satisfactions or statements of release filed with the department under this chapter must be retained by it for a period of 8 years after receipt, after which they may be destroyed.

(5) Except as provided in 61-3-109 and subsection (6) of this section, a voluntary security interest or lien is perfected on the date that the lien notice and the certificate of ownership or manufacturer's statement of origin are delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(6) Except as provided in 61-3-109, voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date that the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date that the lien notice is delivered to the department, of the existence of the security interest.

(7) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles, all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable except that deposits must be made with the department.

(8) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department the sum of $1 for each day that the person fails to file the satisfaction.

(9) Upon receipt of notice of any involuntary liens or attachments against the record of any motor vehicle registered in this state, the department shall

within 24 hours mail to the owner, conditional sale vendor, mortgagees, or assignees of the owner, conditional sale vendor, or mortgagees a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court and the action and the names of the attorneys for the plaintiff and attaching creditor.

(10) It is not necessary to refile with the department any instruments on file in the offices of the county clerk and recorders at the time that this law takes effect.

(11) A fee of $4 must be paid to the department to file any security interest or other lien against a motor vehicle. The $4 fee includes the cost of filing a satisfaction or release of the security interest and also the cost of entering the satisfaction or release on the records of the department and of deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department or for filing an assignment of any security interest or other lien on file with the department. All fees provided for in this section must be paid to the county treasurer for deposit in the state general fund in accordance with 15-1-504. *(Terminates June 30, 2008—sec. 2, Ch. 260, L. 1999.)*

61-3-103. *(Effective July 1, 2008)* **Filing of security interests — perfection — rights — procedure — fees.** (1) The department may not file any voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the vehicle encumbered. If the approved notice form is transmitted to the department, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, amount of lien, and is signed by the debtor. The department shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the vehicle encumbered. The department shall mail a statement certifying to the filing of a security interest or lien to the secured party. The department shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department shall return the certificate of ownership to the county treasurer where the vehicle is to be registered. The owner of a motor vehicle is the person entitled to operate and possess the motor vehicle.

(2) A security interest in a motor vehicle held as inventory by a dealer licensed under chapter 4 of this title must be perfected in accordance with Title 30, chapter 9.

(3) Whenever a security interest or lien is filed against a motor vehicle that is subject to two security interests previously perfected under this section, the department shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject to additional security interests on file with the

Department of Justice." Other information regarding the additional security interests need not be endorsed on the certificate.

(4) Satisfactions or statements of release filed with the department under this chapter must be retained by it for a period of 8 years after receipt, after which they may be destroyed.

(5) Except as provided in subsection (6), a voluntary security interest or lien is perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(6) Voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department, of the existence of the security interest.

(7) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable except that deposits must be made with the department.

(8) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department the sum of $1 for each day that the person fails to file such satisfaction.

(9) Upon receipt of notice of any involuntary liens or attachments against the record of any motor vehicle registered in this state, the department shall within 24 hours mail to the owner, conditional sale vendor, mortgagees, or assignees of any owner, conditional sale vendor, or mortgagees a notice showing the name and address of the lien claimant, amount of the lien, date of execution of lien, and in the case of attachment the full title of the court and the action and the name of the attorneys for the plaintiff and attaching creditor.

(10) It is not necessary to refile with the department any instruments on file in the offices of the county clerk and recorders at the time this law takes effect.

(11) A fee of $4 must be paid to the department to file any security interest or other lien against a motor vehicle. The $4 fee must include and cover the cost of filing a satisfaction or release of the security interest and also the cost of entering the satisfaction or release on the records of the department and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department or for filing an assignment of any security

interest or other lien on file with the department. All fees provided for in this section must be paid to the county treasurer for deposit in the state general fund in accordance with 15-1-504.

History: En. Subd. 4, Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758.3, R.C.M. 1935; amd. Sec. 7, Ch. 72, L. 1937; amd. Sec. 3, Ch. 148, L. 1943; amd. Sec. 3, Ch. 63, L. 1945; amd. Sec. 11-143, Ch. 264, L. 1963; amd. Sec. 26, Ch. 121, L. 1965; R.C.M. 1947, 53-110; amd. Sec. 2, Ch. 189, L. 1979; amd. Sec. 1, Ch. 502, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 341, L. 1985; amd. Sec. 1, Ch. 358, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 361, L. 1987; amd. Sec. 3, Ch. 378, L. 1987; amd. Sec. 7, Ch. 398, L. 1989; amd. Sec. 1, Ch. 463, L. 1991; amd. Sec. 7, Ch. 482, L. 1993; amd. Sec. 2, Ch. 90, L. 1997; amd. Sec. 13, Ch. 409, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 409 in (2) in both versions after "under" substituted "chapter 4 of this title" for "the provisions of 61-4-101"; and in version effective July 1, 2008, made minor changes in style. Amendment effective October 1, 1999.

Extension of Termination: Section 2, Ch. 260, L. 1999, amended sec. 4, Ch. 90, L. 1997, to extend the termination date for this section from June 30, 2000, to June 30, 2008.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

Cross-References

Fund structure, 17-2-102.

Boats — certificate of ownership — filing of security interests, 23-2-508.

Snowmobiles — certificate of ownership — filing of security interests, 23-2-611.

Off-highway vehicle — certificate of ownership — filing of security interests, 23-2-811.

Off-highway vehicle — nonresident temporary-use permits, 23-2-814.

U.C.C. — filing security interests, Title 30, ch. 9, part 4.

Retail installment sales, Title 31, ch. 1, part 2.

Certificate of ownership — issuance, 61-3-202.

Mortgages, Pledges, and Liens, Title 71.

61-3-104. Repealed. Sec. 1, Ch. 252, L. 1985.

History: En. Sec. 4, Ch. 148, L. 1943; R.C.M. 1947, 53-111; amd. Sec. 2, Ch. 502, L. 1979.

61-3-105. Registrant as prima facie owner of vehicle. For the purpose of this title, except as provided by 61-3-701(3) the person appearing on the public records as the registrant of any motor vehicle shall prima facie be deemed the owner thereof.

History: En. Sec. 5, Ch. 166, L. 1929; re-en. Sec. 1746.4, R.C.M. 1935; R.C.M. 1947, 32-1110; amd. Sec. 27, Ch. 421, L. 1979.

Cross-References

Owner defined, 61-1-310.

61-3-106. Report of stolen and recovered motor vehicles — accessibility — insurance fraud and theft reporting — immunity. (1) It shall be the duty of the sheriff of every county of the state and of the chief of police or commissioner of police of every city to make an immediate entry regarding each vehicle theft or recovery into the state automated stolen vehicle file maintained by the law enforcement network system (LENS). Failure on the part of any officer shall be considered to be misfeasance in office and shall constitute grounds for removal. Upon entry of such information, LENS and the national crime information center must be allowed immediate access to the state automated stolen vehicle file. It shall also be the duty of LENS to file reports of stolen and recovered motor vehicles reported to it from other states.

(2) The state automated stolen vehicle file must be made available to the secretary of state or other proper official in each state of the United States through access to the national crime information center. Before issuing a

certificate of ownership, the department shall check the vehicle identification number on the motor vehicle to be registered against the state automated stolen vehicle file.

(3) Upon written request to an insurer by an authorized governmental agency or upon an insurer's own initiative to notify a specific lienholder, an insurer or an agent authorized by an insurer to act on its behalf shall release to the requesting agency or lienholder relevant information in the insurer's possession relating to any specific motor vehicle theft or motor vehicle insurance fraud.

(4) (a) Except as otherwise provided by law, information furnished pursuant to this section is privileged and may not become part of a public record. The evidence or information is not subject to a subpoena duces tecum in a civil or criminal proceeding unless the court determines after reasonable notice to the parties listed in subsection (4)(b) and a hearing that the public interest and any ongoing investigation by the parties listed in subsection (4)(b) will not be jeopardized by compliance with the subpoena duces tecum.

(b) The notice required by subsection (4)(a) must be sent to an insurer, an agent authorized by an insurer to act on its behalf, an authorized governmental agency that has an interest in the information, and a specific lienholder.

(5) An authorized governmental agency provided with information pursuant to this section may release or provide the information to any other authorized governmental agency.

(6) An insurer, an agent authorized by an insurer to act on its behalf, or an employee of an insurer or agent is not subject to civil or criminal liability in any cause of action for releasing or receiving information under this section.

(7) As used in this section, the following definitions apply:

(a) "Authorized governmental agency" means any duly constituted criminal investigative department or agency of the United States; the state department of justice; the state auditor's office; a peace officer of the state or a political subdivision of the state; or a prosecuting attorney of any state, of any political subdivision of any state, or of the United States or any district of the United States.

(b) "Relevant information" includes but is not limited to:

(i) insurance policy information related to any motor vehicle theft or motor vehicle insurance fraud under investigation, including an application for a policy;

(ii) available policy premium payment records;

(iii) the history of previous claims made by the insured; and

(iv) information relating to the investigation of any motor vehicle theft or motor vehicle insurance fraud, including statements of any person, proof of loss and notice of loss, and any information that an insurer knows or reasonably believes reveals or may reveal the identity of a person who it has reason to believe committed a criminal or fraudulent act relating to a motor vehicle theft or motor vehicle insurance claim or has knowledge of an act that has not been reported to an authorized governmental agency.

(c) "Specific lienholder" means a person or firm that holds a security interest in a motor vehicle involved in a specific motor vehicle theft or motor vehicle insurance fraud.

History: En. Sec. 13, Ch. 113, L. 1925; re-en. Sec. 1763.5, R.C.M. 1935; R.C.M. 1947, 53-137; amd. Sec. 28, Ch. 421, L. 1979; amd. Sec. 1, Ch. 233, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 272, L. 1991.

Cross-References

Duties of Secretary of State, 2-15-401.

Duties of Sheriff, 7-32-2121.

Misconduct of Undersheriff, 7-32-2129.

Duties of Chief of Police, 7-32-4105.

Role of Police Commission in hearing and deciding charges against police officers, 7-32-4155.

Theft, 45-6-301.

Unauthorized use of motor vehicles, 45-6-308.

61-3-107. Identification number for trailers, campers, and other vehicles. (1) A trailer, semitrailer, housetrailer, or camper that does not have a manufacturer's or other identifying number thereon must be assigned an identification number by the department.

(2) The department may not issue a certificate of ownership or reissue a certificate of ownership covering a vehicle on which the identification number has been altered, removed, obliterated, defaced, omitted, or is otherwise absent unless the owner or other person lawfully in possession of the vehicle files an application with the department, accompanied by a fee of $5. The application must be on a form provided by the department and must contain information required by the department for the assignment of a special identification number for a vehicle. Upon receipt of the application and if the department is satisfied that the applicant is entitled to the assignment of an identification number, the department shall designate a special identification number for the vehicle. The department shall note the special identification number on the application and on records to be kept by the department. This assigned identification number must be stamped or securely attached in a conspicuous position on the vehicle in the manner and form prescribed by the department.

(3) In a case where the true identity of a vehicle can be established by restoring the original manufacturer's serial number or other distinguishing numbers or identification marks, the department may not assign a special identification number and shall replace the vehicle's identification mark by duplicating the manufacturer's full numeric or alphanumeric identification sequence. The department may replace an identification mark only after conducting an inquiry to determine that ownership of the vehicle bearing a restored identification mark has been lawfully transferred to the applicant. The applicant shall apply for and the department shall replace the identification mark on the vehicle as required under subsection (2).

(4) Upon receipt by the department of a certificate of inspection completed by a peace officer or authorized member of the department verifying that the identification number has been stamped or securely attached in a conspicuous position upon the vehicle, accompanied by an application for a certificate of ownership and the required fee, the department shall use the number as the numeric or alphanumeric identification mark for the vehicle in any certificate of ownership that may be issued.

History: En. Sec. 4, Ch. 75, L. 1917; re-en. Sec. 1758, R.C.M. 1921; amd. Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758, R.C.M. 1935; amd. Sec. 5, Ch. 72, L. 1937; amd. Sec. 1, Ch. 148, L. 1943; amd. Sec. 1, Ch. 63, L. 1945; amd. Sec. 1, Ch. 115, L. 1953; amd. Sec. 1, Ch. 200, L. 1955; amd. Sec. 1, Ch. 139, L. 1961; amd. Sec. 7, Ch. 127, L. 1969; amd. Sec. 1, Ch. 179, L. 1971; amd. Sec. 1, Ch. 104, L. 1975; R.C.M. 1947, 53-107(part); amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 2, Ch. 272, L. 1991; amd. Sec. 3, Ch. 715, L. 1991.

Cross-References

Retail installment sales — manufactured structure defined, 31-1-202.

61-3-108. Disposition of fees. All fees payable to the department under this title, unless otherwise provided, shall be deposited in the general fund.

History: En. Sec. 34, Ch. 421, L. 1979; En. Sec. 3, Ch. 654, L. 1979; amd. Sec. 1, Ch. 268, L. 1983; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 12, Ch. 503, L. 1985; amd. Sec. 8, Ch. 398, L. 1989.

Cross-References

Fund structure, 17-2-102.

Teletypewriter communications system, Title 44, ch. 2, part 3.

Montana Forensic Science System Act, Title 44, ch. 3.

Law Enforcement Academy, Title 44, ch. 10.

Department defined, 61-1-301.

61-3-109. *(Temporary)* **Electronic search, lien filing, and registration.** (1) The department shall implement a pilot program allowing electronic search of motor vehicle titles, electronic filing and perfection of liens on motor vehicles, and electronic registration of motor vehicles.

(2) The department shall adopt rules to implement the pilot program. The rules must include procedures designed to constitute constructive notice of electronically filed and perfected liens and electronically registered titles to subsequent purchasers or encumbrancers from the date of a lien's perfection or title registration. *(Terminates June 30, 2008—sec. 2, Ch. 260, L. 1999.)*

History: En. Sec. 1, Ch. 90, L. 1997; amd. Sec. 1, Ch. 260, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 260 in (1) after "allowing" inserted "search of motor vehicle titles, electronic" and at end inserted "and electronic registration of motor vehicles"; in (2) in second sentence after "liens" inserted "and electronically registered titles" and at end inserted "or title registration"; and made minor changes in style. Amendment effective April 5, 1999.

Extension of Termination: Section 2, Ch. 260, L. 1999, amended sec. 4, Ch. 90, L. 1997, to extend the termination date for this section from June 30, 2000, to June 30, 2008.

Part 2

Certificates of Ownership

61-3-201. Transfer of interest — cancellation of erroneous certificate of ownership or registration. (1) Upon a transfer of any interest in a motor vehicle registered under the provisions of this chapter, the person whose interest is to be transferred shall write his signature with pen and ink upon the certificate of ownership issued for the vehicle in the appropriate space provided, and the signature must be acknowledged before the county treasurer, a deputy county treasurer, an elected official authorized to acknowledge signatures, an employee of the department, or a notary public.

(2) Within 20 calendar days after endorsement, the transferee shall forward both the endorsed certificate of ownership with the odometer mileage statement required under 61-3-206 and the certificate of registration, together with the information required under 61-3-202, to the county treasurer, who shall forward them to the department. The department may not issue a certificate of ownership or certificate of registration until the outstanding certificates are surrendered to that office or their loss is established to its reasonable satisfaction. Failure to make application within the 20-day grace

period subjects the transferee to a penalty of $10. The county treasurer shall collect the penalty at the time of registration. The penalty is in addition to the fees otherwise provided by law. If the transferee does not make application within 25 days, a creditor or secured party may pay the fees for the transfer of title and filing of security interest or lien in order to have title transferred to the transferee and have the security interest or lien filed. The creditor or secured party is not liable for the penalty, registration fees, or taxes. The department shall return the certificate of title to the county treasurer as provided in 61-3-103(1). When the certificate of ownership is returned by the department to the county treasurer, the treasurer shall hold the certificate of ownership until the vehicle is properly registered.

(3) In the event of a transfer by operation of law of any interest in a motor vehicle as upon inheritance, devise, or bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in the performance of the terms of a lease or executory sales contract, or otherwise than by voluntary act of the person whose title or interest is transferred, the executor, administrator, receiver, trustee, sheriff, or other representative or successor in interest of the person whose interest is transferred shall forward to the department an application for a certificate of ownership in the form required by the department, together with a verified or certified statement of the transfer of interest. The statement must set forth the reason for the involuntary transfer, the interest transferred, the name of the person to whom the interest is to be transferred, the process of procedure effecting the transfer, and other information requested by the department. Evidence and instruments otherwise required by law to effect a transfer of legal or equitable title to or an interest in chattels as may be required in such cases must be furnished with the statement. If the department is satisfied that the transfer is regular and that all formalities required by law have been complied with, it shall send to the owner, conditional sales vendor, lessor, mortgagee, and other lienor, as shown by its records, notice of the intended transfer and, not less than 5 days after sending notice, shall issue a new certificate of ownership and certificate of registration to the transferee. The notice required by this section is complied with by deposit in the U.S. mail of the notice, postage prepaid, addressed to the person at the respective address shown on its records.

(4) When the vehicle certificate of ownership that is involuntarily transferred is not registered in this state, the procedure in subsection (3) must be followed in applying for a new certificate of ownership and certificate of registration; however, in lieu of the statement required in subsection (3), the department may accept an affidavit of repossession on the form provided by the state in which a lien has been perfected and the department need not send notice of intended transfer and shall issue a new certificate of ownership and a new certificate of registration to the person entitled to the certificates.

(5) (a) If the owner of one or more motor vehicles, trailers, semitrailers, or housetrailers registered under this chapter and not exceeding a combined value of $15,000 dies without leaving other property necessitating the procuring of letters of administration or letters testamentary, the surviving spouse or other heir unless the property is by will otherwise bequeathed may secure transfer of the decedent's certificate of ownership and the certificate of registration for the vehicle.

(b) The person seeking transfer of the certificate of ownership shall file an affidavit with the department setting forth the fact of survivorship and the name and address of any other heirs and other facts as are necessary under subsection (5)(a) to entitle the affiant to a transfer.

(c) The department is authorized to transfer the certificate of ownership and certificate of registration, subject to all security interests shown by its records, upon receipt of an affidavit showing that the affiant is entitled to a transfer under the provisions of subsection (5)(a).

(6) Nothing in subsection (5) prevents a secured party from assigning his interest in a motor vehicle registered under the provisions of this chapter to any other person without the consent of and without affecting the interest of the holder of the certificate of ownership and certificate of registration. Upon any assignment by a secured party of his security interest in any motor vehicle registered under this chapter, a copy of the assignment must be filed with the department and a record of the assignment made upon its records.

(7) The certificate of ownership is valid until canceled by the department upon a transfer of any interest shown in the certificate, and annual renewal is not needed.

(8) (a) Upon its determination that a certificate of ownership or a registration receipt contains an error or that the applicant has paid the required fees and taxes with an insufficient funds check and if the department has been notified of that fact by the county attorney, the department may cancel the certificate of ownership or receipt and, in the case of an error, issue a replacement for the erroneous certificate or receipt if the owner has returned the certificate or receipt to be canceled. If the owner fails to return to the department the certificate of ownership, the registration receipt, or the license plate, the department shall direct a peace officer or department employee to secure and return the certificate, receipt, or license plate to the department.

(b) Any person who fails to return a certificate of ownership or a registration receipt that contains an error or that has been canceled by the department due to an insufficient funds check, as provided in subsection (8)(a), after receiving actual notice of the department's demand for the return of the certificate or receipt, as required by subsection (8)(a), is guilty of a misdemeanor and upon conviction may be fined an amount not to exceed $500.

History: (1) thru (6)En. Subd. 3, Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758.2, R.C.M. 1935; amd. Sec. 6, Ch. 72, L. 1937; amd. Sec. 2, Ch. 148, L. 1943; amd. Sec. 2, Ch. 63, L. 1945; amd. Sec. 1, Ch. 191, L. 1967; amd. Sec. 1, Ch. 213, L. 1969; amd. Sec. 2, Ch. 138, L. 1971; amd. Sec. 1, Ch. 399, L. 1977; Sec. 53-109, R.C.M. 1947; (7)En. Subd. 2, Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758.1, R.C.M. 1935; amd. Sec. 1, Ch. 244, L. 1955; amd. Sec. 1, Ch. 146, L. 1957; amd. Sec. 1, Ch. 100, L. 1959; amd. Sec. 25, Ch. 121, L. 1965; amd. Sec. 1, Ch. 116, L. 1969; amd. Sec. 8, Ch. 127, L. 1969; amd. Sec. 1, Ch. 138, L. 1971; amd. Sec. 2, Ch. 214, L. 1971; amd. Sec. 11, Ch. 74, L. 1975; Sec. 53-108, R.C.M. 1947; R.C.M. 1947, 53-108(part), 53-109; amd. Sec. 1, Ch. 203, L. 1979; amd. Sec. 29, Ch. 421, L. 1979; amd. Sec. 1, Ch. 324, L. 1985; amd. Sec. 2, Ch. 358, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 104, L. 1989; amd. Sec. 3, Ch. 363, L. 1989; amd. Sec. 3, Ch. 604, L. 1991; amd. Sec. 3, Ch. 724, L. 1991.

Cross-References

Notaries public, Title 1, ch. 5, part 4.

Duties of County Treasurer, 7-6-2111.

Transfer of interest in off-highway vehicle, 23-2-812.

U.C.C. — security interests, Title 30, ch. 9.

Intestacy, wills, and donative transfers, Title 72, ch. 2.

61-3-202. Certificate of ownership — issuance — contents — joint ownership — inspection — fees. (1) Upon completion of the application for certificate of ownership, on forms furnished by the department, the county treasurer shall forward one copy of the application to the department, which shall enter the information contained in the application upon the corresponding records of its office and, except as provided in 61-3-103(1) and 61-3-201(2) concerning applications by creditors or secured parties, shall furnish the applicant a certificate of ownership subject to the provisions of 61-3-103.

(2) The certificate of ownership shall contain upon the face thereof:

(a) the date issued;

(b) the name and mailing and residence address of the owner or the names and addresses of joint owners;

(c) except as provided in 61-3-103, the name and complete address of any holder of a perfected security interest in the registered vehicle;

(d) a description of the registered vehicle, including the year built and vehicle identification number;

(e) except as provided in 61-3-103, the filing date of any lien against such motor vehicle; and

(f) such other statement of facts as may be determined by the department.

(3) When the names and addresses of more than one owner who are members of the same immediate family are listed on the certificate of ownership, joint ownership with right of survivorship, and not as tenants in common, is presumed.

(4) Upon receipt of the application, the department shall recheck the application. If there is any error in the application, it may be returned to the owner or to the county treasurer to effectively secure the correction of such error, who shall return the same to the department.

(5) The certificate of ownership shall contain a notice to the department of a transfer of interest of the owner and such other statements as may be determined by the department.

(6) A salvage vehicle for which a certificate of ownership is sought must be inspected for the vehicle identification number to authenticate the identity of the vehicle before a certificate of ownership can be issued. The inspection may not attest to the roadworthiness or safety condition of the vehicle and must be performed by department employees or peace officers designated by the department.

(7) The department may contract with a person or entity for use of a facility as a regional inspection site for salvage vehicles.

(8) To defray the cost of the vehicle inspection program, the department shall collect a fee of $18.50 for the inspection of each salvage vehicle for which a certificate of ownership is sought. The fee must be distributed as follows:

(a) A portion of the inspection fee for each salvage vehicle must be remitted by the department to the state treasurer for deposit in the general fund.

(b) A portion of the inspection fee for each salvage vehicle must be remitted by the department to the inspection site that has contractually permitted the use of its facility for the inspection.

(9) (a) An authorized inspector may seize and hold a vehicle:

(i) the inspector has probable cause to believe is stolen;

(ii) on which a motor number or vehicle identification number has been defaced, altered, removed, covered, destroyed, or obliterated; or

(iii) that does not conform with the vehicle identification number on the certificate of ownership.

(b) A seized vehicle may be held until the identity of the vehicle is established and arrangements are made for its lawful disposition. An authorized inspector may use any means necessary to identify a vehicle by its vehicle identification number or numbers.

(10) The department may not issue a certificate of ownership for a vehicle until the identity of the vehicle is established.

(11) The department may adopt rules for the implementation and administration of the vehicle inspection program.

History: En. Sec. 4, Ch. 75, L. 1917; re-en. Sec. 1758, R.C.M. 1921; amd. Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758, R.C.M. 1935; amd. Sec. 5, Ch. 72, L. 1937; amd. Sec. 1, Ch. 148, L. 1943; amd. Sec. 1, Ch. 63, L. 1945; amd. Sec. 1, Ch. 115, L. 1953; amd. Sec. 1, Ch. 200, L. 1955; amd. Sec. 1, Ch. 139, L. 1961; amd. Sec. 7, Ch. 127, L. 1969; amd. Sec. 1, Ch. 179, L. 1971; amd. Sec. 1, Ch. 104, L. 1975; R.C.M. 1947, 53-107(part); amd. Sec. 30, Ch. 421, L. 1979; amd. Sec. 3, Ch. 502, L. 1979; amd. Sec. 3, Ch. 341, L. 1985; amd. Sec. 3, Ch. 358, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 4, Ch. 604, L. 1991; amd. Sec. 2, Ch. 725, L. 1991.

Cross-References

Duties of County Treasurer, 7-6-2111.

U.C.C. — security interests, Title 30, ch. 9.

Obscuring identity of machine, 45-6-326.

Liens, Title 71, ch. 3.

61-3-203. Fee for original certificate of ownership and transfer of registration — disposition. (1) Except as provided in subsection (2), a charge of $5 must be made for issuance of an original certificate of ownership of title and for a transfer of registration, which must be collected by the county treasurer. The fees must be distributed as follows:

(a) The amount of $3.50 of each fee must be remitted to the department by the county treasurer, as provided in 15-1-504, for each application for original certificate of ownership or transfer of registration.

(b) Each March, the county commissioners of each county shall divide the fees retained by the county to:

(i) the city road fund of each city and town within the county based on the number of motor vehicles registered inside the corporate limits of each city or town; and

(ii) the county road fund based on the number of motor vehicles registered outside the corporate limits of cities and towns.

(2) Upon transfer of any interest in a used motor vehicle by a dealer, broker, or wholesaler as provided in 61-4-111(1), a charge of $5 must be paid to the department.

History: En. Subd. 5, Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758.4, R.C.M. 1935; amd. Sec. 8, Ch. 72, L. 1937; amd. Sec. 27, Ch. 121, L. 1965; amd. Sec. 2, Ch. 41, L. 1975; R.C.M. 1947, 53-112; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 2, Ch. 361, L. 1987; amd. Sec. 1, Ch. 378, L. 1987; amd. Sec. 7, Ch. 535, L. 1989; amd. Sec. 1, Ch. 342, L. 1995.

Cross-References

Fees of County Treasurer, 7-6-2131.

City and county road funds, 7-14-2512.

61-3-204. Lost certificates. In the event any certificate of ownership is lost, mutilated, or becomes illegible, the owner shall immediately make application for and obtain a duplicate thereof, upon furnishing satisfactory evidence of such facts and upon payment of a fee of $3. Revenue from this fee must be deposited in the general fund.

History: En. Subd. 6, Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758.5, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1953; amd. Sec. 28, Ch. 121, L. 1965; R.C.M. 1947, 53-113(part); amd. Sec. 1, Ch. 654, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 378, L. 1987; amd. Sec. 9, Ch. 398, L. 1989.

Cross-References

Fund structure, 17-2-102.

61-3-205. Transfer of ownership of vehicles by insurance company. (1) When an insurance company or its adjuster has taken possession of a motor vehicle as a result of settling an insurance claim and transfers ownership of the motor vehicle, it shall deliver to the transferee at the time of transfer a certificate of ownership signed and acknowledged by the registered owner or owners before the county treasurer, a deputy county treasurer, or a notary public.

(2) If the certificate of ownership names one or more holders of a perfected security interest in the motor vehicle, the insurance company or its adjuster shall also secure and deliver to the transferee a release from the secured party of the security interest.

History: En. Sec. 1, Ch. 12, L. 1981; amd. Sec. 4, Ch. 363, L. 1989; amd. Sec. 4, Ch. 724, L. 1991.

Cross-References

U.C.C. — security interests, Title 30, ch. 9.

Motor vehicle liability insurance, Title 33, ch. 23, part 2.

61-3-206. Odometer disclosure requirements on transfer of vehicle — dealer to preserve record. (1) Except as provided in subsection (3), before executing any transfer of ownership document relating to a motor vehicle, each seller of a motor vehicle shall record on the certificate of ownership the odometer reading at the time of transfer or, if the certificate of ownership does not provide for the recording of the odometer reading, furnish to the purchaser a written statement that is signed by the seller, who shall also print the seller's name on the written statement, and that contains the following information:

(a) the odometer reading at the time of transfer;

(b) the date of transfer;

(c) the seller's name and current address;

(d) the purchaser's name and current address;

(e) the vehicle year, make, model, body style, and identification number;

(f) one of the following statements or certification:

(i) a certification by the seller that, to the best of the seller's knowledge, the odometer reading reflects the actual miles or kilometers the vehicle has been driven;

(ii) if the seller knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit of 99,999 miles or kilometers, the seller shall include a statement to that effect; or

(iii) if the seller knows that the odometer reading differs from the number of miles or kilometers the vehicle has actually traveled and that the difference is greater than that caused by odometer calibration error, the seller shall include a statement that the odometer reading is not the actual mileage and should not be relied upon.

(2) The purchaser shall acknowledge receipt of the disclosure statement by signing it and printing the purchaser's name on the disclosure statement.

(3) The seller of the following types of motor vehicles need not disclose the odometer reading of the vehicle as required in subsection (1):

(a) a motor vehicle that is 10 years old or older;

(b) a vehicle that is not self-propelled;

(c) a new motor vehicle transferred between dealers or wholesalers prior to its first retail sale, unless the vehicle has been used as a demonstrator;

(d) a vehicle having a gross weight rating of more than 16,000 pounds; or

(e) a vehicle sold directly by the manufacturer to an agency of the United States.

(4) A dealer or wholesaler licensed under chapter 4 of this title shall create a record of the information required in subsection (1) and shall maintain and preserve that record for at least 5 years after the date of sale of the motor vehicle to which the information pertains.

History: En. Sec. 2, Ch. 324, L. 1985; amd. Sec. 1, Ch. 23, L. 1989; amd. Sec. 12, Ch. 383, L. 1991; amd. Sec. 5, Ch. 724, L. 1991; amd. Sec. 14, Ch. 409, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 409 in (4) substituted "chapter 4 of this title" for "61-4-101"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

Cross-References

Transfer of interest in motor vehicle, 61-3-201.

Tampering with odometer of motor vehicle — misdemeanor, 61-3-607.

61-3-207. Mobile home or housetrailer — transfer of interest. (1) Upon a transfer of any interest in a mobile home or housetrailer under the provisions of this chapter, the application for the transfer must be made through the county treasurer's office in the county in which the mobile home or housetrailer is located at the time of the transfer. The county treasurer may not accept the application unless all taxes, interest, and penalties that have been assessed on the mobile home or housetrailer have been paid in full.

(2) When a mobile home or housetrailer is sold under contract or under conditions that title is not immediately conveyed, the parties to the transaction shall immediately file with the county clerk and recorder a notice of intention to transfer title. The notice must indicate the name of the party who is responsible for payment of taxes upon the mobile home or housetrailer after the transfer. The clerk and recorder shall immediately notify the department of revenue of the information in the notice. The penalty provisions of 61-3-201(2) do not apply if the notice of intent to transfer is filed with the county clerk and recorder within 20 days after the transfer.

History: En. Sec. 1, Ch. 555, L. 1985; amd. Sec. 130, Ch. 27, Sp. L. November 1993; amd. Sec. 21, Ch. 200, L. 1997.

Cross-References

Duties of County Clerk, 7-4-2611.

Documents subject to recording by County Clerk, 7-4-2613.

For purpose of chapter 3, definition of motor vehicle includes housetrailer, 61-1-102.

Housetrailer defined, 61-1-501.

61-3-208. Affidavit and bond for certificate. (1) If an applicant for a vehicle certificate of title cannot provide the department with a certificate of title transferred to the applicant, the department may issue a certificate of title for the vehicle if the applicant furnishes an affidavit in a form prescribed by the department.

(2) The affidavit must be signed and sworn to before an officer authorized to administer oaths and affirmations. The affidavit must accompany the application for the certificate of title and include:

(a) the facts and circumstances through which the applicant acquired ownership and possession of the vehicle;

(b) information as required by the department to enable it to determine what security interests, liens, and encumbrances, if any, are outstanding against the vehicle;

(c) the date and the amount secured by the security interests, liens, and encumbrances, if any; and

(d) a statement that the applicant has the right to have a certificate of title issued.

(3) If after examination of the application, affidavit, and any other evidence the department determines that a certificate of title for the vehicle should be issued to the applicant, the department shall require the applicant to file with the department a good and sufficient bond before issuing the certificate of title. The bond must be:

(a) in an amount equal to the average trade-in or wholesale value of the vehicle as determined by the applicable national appraisal guide for the vehicle as of January 1 for the year in which the application for certificate of title is made. When a national appraisal guide is not available for a vehicle, the department shall determine an alternative value for the vehicle.

(b) conditioned to indemnify a prior owner, lienholder, subsequent purchaser, secured creditor, or encumbrancer of the motor vehicle and any respective successors in interest against expenses, losses, or damages caused by the issuance of the certificate or by a defect in or undisclosed security interest upon the right, title, and interest of the applicant in the vehicle; and

(c) issued by a surety company authorized to do business in the state.

(4) Any interested person has a right of action to recover on the bond for a breach of its conditions, but the aggregate liability of the surety to all persons may not exceed the amount of the bond.

(5) Unless the department has been notified of a pending action to recover the bond, the department shall return the bond at the earlier of:

(a) 3 years from the date of issuance of the certificate of title; or

(b) the date of surrender of the valid certificate of title to the department if the vehicle is no longer registered in this state.

History: En. Sec. 1, Ch. 578, L. 1989; amd. Sec. 8, Ch. 482, L. 1993; amd. Sec. 19, Ch. 496, L. 1997.

Cross-References

U.C.C. — security interests, Title 30, ch. 9.

61-3-209. Exception to certificate of ownership requirements for manufactured homes. (1) A manufactured home is subject to the provisions of this part unless the manufactured home has been declared an improvement to real property in accordance with the provisions of 15-1-116.

(2) A manufactured home that has been classified as personal property is subject to the provisions of this part.

History: **En. Sec. 4, Ch. 200, L. 1997.**

61-3-210. Definitions. As used in this part, the following definitions apply:

(1) "Cab" means the passenger compartment of a common truck or pickup truck. It is a unit of construction that includes the top or roof and the cowl and may or may not include glass, instrumentation, the steering column, and a seat or seats.

(2) "Center structure" includes the section of either a unibody or frame-type passenger vehicle that consists of a unit of sheet metal that extends from the firewall to the back of the rear seat or the centerline of the rear wheels. The structure may comprise the roof, side and rear window posts, cowl panel, dash panel, floor pans, doors, and rocker panels if two or more of these parts are assembled together as one unit.

(3) "Component part" means the front-end assembly, center structure, or tail section of an automobile, the cab of a truck, the bed of a 1-ton or lighter truck, the frame of a vehicle, or any part of a vehicle that contains a vehicle identification number or a derivative of a vehicle identification number.

(4) "Frame" means the structure that supports the automobile body and other external component parts.

(5) "Front-end assembly" includes the hood, right front and left front fenders, grill, bumper, and radiator supports if two or more of these parts are assembled together as one unit forward of the firewall.

(6) "Salvage certificate" means a certificate of ownership issued by the department for a salvage vehicle that may be used to retitle the vehicle.

(7) "Salvage vehicle" means a vehicle damaged by collision, fire, flood, accident, trespass, or other occurrence to the extent that the owner, an insurer, or other person acting on behalf of the owner determines that the cost of parts and labor makes it uneconomical to repair the vehicle.

(8) "Salvage vehicle purchaser" means a person, other than an insurer, who purchases or otherwise obtains possession of a salvage vehicle.

(9) "Tail section" includes the floor pan, right rear and left rear quarter panels, deck lid, upper rear and lower rear panels, and rear bumper if two or more of these parts are assembled together as one unit.

(10) "Vehicle identification number" means the number, letters, or combination of numbers and letters assigned by the manufacturer, by the department, or in accordance with the laws of another state or country for the purpose of identifying the vehicle or a component part of the vehicle.

History: **En. Sec. 1, Ch. 725, L. 1991.**

61-3-211. Surrender of certificate of ownership — issuance of salvage certificate — salvage retitling requirements. (1) An insurer acquiring ownership of a vehicle that is less than 5 years of age that he determines to be a salvage vehicle shall surrender the certificate of ownership to the department within 15 days after acquiring the certificate. If the insurer has not sold the salvage vehicle prior to the time of surrendering the certificate of ownership, the insurer shall apply for a salvage certificate on a form prescribed by the department. If the certificate of ownership names one or more holders of a perfected security interest in the vehicle, the insurer shall secure and deliver to the department a release from each secured party of the secured interest.

(2) Upon receipt of a properly executed certificate of ownership and a salvage certificate application from an insurer, the department shall issue a salvage certificate to the insurer within 5 working days of the date of receipt of the application. Upon receipt of a salvage certificate issued by the department, an insurer may possess, retain, transport, sell, transfer, or otherwise dispose of the salvage vehicle. The salvage certificate is prima facie evidence of ownership of a salvage vehicle.

(3) If the insurer sells a salvage vehicle within the 15-day period established in subsection (1) prior to surrendering the certificate of ownership, the insurer shall complete a salvage receipt on a form prescribed by the department. The insurer shall deliver the original salvage receipt to the salvage vehicle purchaser only after obtaining a clear title and lien release. Prior to disposing of the salvage vehicle, the salvage vehicle purchaser shall apply for a salvage certificate by completing the salvage receipt and submitting it to the department. The insurer shall deliver a copy of the salvage receipt with the surrendered certificate of ownership to the department. Upon receipt of the certificate of ownership from the insurer and the application from the salvage vehicle purchaser, the department shall issue a salvage certificate to the salvage vehicle purchaser that is prima facie evidence of ownership.

(4) If an insurer determines that a salvage vehicle will remain with the owner after an agreed settlement, the insurer shall notify the department of the settlement on a form prescribed by the department. Upon receipt of the notice, the department may require the owner to surrender the certificate of ownership in compliance with this part, regardless of whether ownership of the salvage vehicle was obtained in a jurisdiction not requiring the surrender of the certificate of ownership or a comparable ownership document.

(5) At the time of surrender of a certificate of ownership for a salvage vehicle not acquired by an insurer, the department shall issue a salvage certificate to the owner. Upon receipt of a salvage certificate issued by the department to a noninsurer, the owner may possess, retain, transport, sell, transfer, or otherwise dispose of the salvage vehicle. A salvage certificate is prima facie evidence of ownership of a salvage vehicle.

(6) A fee of $5 must be paid to the department for the issuance of a salvage certificate.

(7) A salvage vehicle owned by or in the inventory of a motor vehicle wrecking facility on October 1, 1991, is exempt from the provisions of this section if the owner of the facility has complied with the provisions of 75-10-513(2).

History: En. Sec. 3, Ch. 725, L. 1991.

Cross-References

Motor vehicle recycling and disposal, Title 75, ch. 10. part 5.

61-3-212. Retitling salvage vehicles — penalty. (1) Prior to operating a salvage vehicle on the roads and highways of this state, the owner shall present the vehicle and the salvage certificate, if one has been issued, or the certificate of ownership, the appropriate receipts or bills of sale establishing ownership, and the source of component parts used to rebuild the vehicle to a department employee or designated peace officer for inspection at a regional inspection site authorized under 61-3-202(7). An owner may obtain a 72-hour temporary registration permit from the department or its designee for the purpose of moving a salvage vehicle to and from the designated inspection site.

(2) (a) The inspector shall inspect the vehicle to verify the identity of the vehicle.

(b) The inspector shall verify that the component parts used to rebuild the vehicle are evidenced by traceable receipts or bills of sale and that there are no indications that the vehicle or any of its parts are stolen. Documentation provided by the owner or employee of a wrecking facility licensed under the provisions of Title 75, chapter 10, part 5, is prima facie evidence of the facts stated in the documentation.

(3) Following inspection and prior to operating the vehicle on the roads and highways of this state, the owner shall apply for a new certificate of ownership by submitting the application, the salvage certificate, receipts or bills of sale, and a copy of the inspection report to the department.

(4) Upon receipt of the application, required documentation, and payment of the fee for a salvage vehicle required in 61-3-202(8), the department shall issue a new certificate of ownership with the words “rebuilt salvage” on the face of the certificate.

(5) A person failing to comply with the provisions of this part is guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed $500. The salvage vehicle purchaser shall produce the salvage certificate upon request of a public official legally entitled to request the certificate. A person may not operate or use a salvage vehicle on the roads or highways of this state except when a permit has been issued.

History: En. Sec. 4, Ch. 725, L. 1991; amd. Sec. 1, Ch. 188, L. 1995.

Part 3
Registration

Part Cross-References

Authorization to issue confidential plates and registration, Title 44, ch. 4, part 2.

61-3-301. Registration — license plate required — display. (1) Except as otherwise provided in this chapter, a person may not operate a motor vehicle upon the public highways of Montana unless the vehicle is properly registered and has the proper number plates conspicuously displayed, one on the front and one on the rear of the vehicle, each securely fastened to prevent it from swinging and unobstructed from plain view, except that vehicles authorized to display demonstrator plates under 61-4-125 or 61-4-129 may have only one number plate conspicuously displayed on the rear. A person may not display on a vehicle at the same time a number assigned to it under any motor vehicle law except as provided in this chapter. A junk vehicle, as defined in Title 75, chapter 10, part 5, being driven or towed to an auto wrecking graveyard for disposal is exempt from the provisions of this section.

(2) A person may not purchase or display on a vehicle a license plate bearing the number assigned to any county as provided in 61-3-332 other than

the county of the person's permanent residence at the time of application for registration. However, the owner of any motor vehicle requiring a license plate on any motor vehicle used in the public transportation of persons or property may make application for the license in any county through which the motor vehicle passes in its regularly scheduled route, and the license plate issued bearing the number assigned to that county may be displayed on the motor vehicle in any other county of the state.

(3) It is unlawful to use license plates issued to one vehicle on any other vehicle, trailer, or semitrailer unless legally transferred as provided by statute, or to repaint old license plates to resemble current license plates.

(4) This section does not apply to a vehicle exempt from taxation under 15-6-215 or subject to taxation under 61-3-520.

(5) Any person violating these provisions is guilty of a misdemeanor and subject to the penalty prescribed in 61-3-601.

History: En. Subd. 6, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.5, R.C.M. 1935; amd. Sec. 1, Ch. 154, L. 1937; amd. Sec. 1, Ch. 73, L. 1941; amd. Sec. 10, Ch. 127, L. 1969; amd. Sec. 1, Ch. 18, L. 1974; R.C.M. 1947, 53-119; amd. Sec. 31, Ch. 421, L. 1979; amd. Sec. 15, Ch. 516, L. 1985; amd. Sec. 1, Ch. 148, L. 1989; amd. Sec. 4, Ch. 525, L. 1989; amd. Sec. 15, Ch. 409, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 409 near end of first sentence in (1) substituted "vehicles authorized to display demonstrator plates under 61-4-125 or 61-4-129" for "trailers, semitrailers, quadricycles, motorcycles, and vehicles authorized in 61-4-102(6) to display demonstrator plates"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Motorcycle defined, 61-1-105.

Quadricycle defined, 61-1-133.

Number plates, 61-3-332.

Carriers of passengers, Title 69, ch. 11, part 2.

Carriers of property, Title 69, ch. 11, part 4.

61-3-302. Residents operating motor vehicles under licenses issued by any state other than Montana forbidden. It shall especially be provided that a resident of the state of Montana shall not operate a motor vehicle under a license issued by any other state than Montana.

History: En. Subd. 8, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.6, R.C.M. 1935; amd. Sec. 2, Ch. 195, L. 1953; amd. Sec. 1, Ch. 247, L. 1957; R.C.M. 1947, 53-121.

Cross-References

Residence — rules for determining, 1-1-215.

Foreign vehicles to display number plates, 61-3-702.

61-3-303. Application for registration. (1) Each owner of a motor vehicle operated or driven upon the public highways of this state shall for each motor vehicle owned, except as otherwise provided in this section, file in the office of the county treasurer in the county where the owner permanently resides at the time of making the application or, if the vehicle is owned by a corporation or used primarily for commercial purposes, in the taxing jurisdiction of the county where the vehicle is permanently assigned an application for registration or reregistration on a form prescribed by the department. The application must contain:

(a) the name and address of the owner, giving the county, school district, and town or city within whose corporate limits the motor vehicle is taxable, if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxable;

(b) the name and address of the holder of any security interest in the motor vehicle;

(c) a description of the motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, declared weight on all trucks for which the manufacturer's rated capacity is 1 ton or less, and type of body and, if a truck, the manufacturer's rated capacity;

(d) the declared weight on all trailers operating intrastate, except travel trailers or trailers and semitrailers registered as provided in 61-3-711 through 61-3-733;

(e) a space in which the person registering the vehicle may indicate the person's desire to donate $1 or more to promote awareness and education efforts for procurement of organ and tissue donations for anatomical gifts; and

(f) other information that the department may require.

(2) A person who files an application for registration or reregistration of a motor vehicle, except of a mobile home or a manufactured home as those terms are defined in 15-1-101(1), shall upon the filing of the application pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321 or 61-3-456;

(b) except as provided in 61-3-456 or unless it has been previously paid:

(i) the motor vehicle taxes or fees in lieu of tax assessed or imposed against the vehicle for the current year of registration and the immediately previous year; or

(ii) the new motor vehicle sales tax against the vehicle for the current year of registration; and

(c) a donation of $1 or more if the person has indicated on the application that the person wishes to donate to promote awareness and education efforts for procurement of organ and tissue donations in Montana to favorably impact anatomical gifts.

(3) The application may not be accepted by the county treasurer unless the payments required by subsection (2) accompany the application. The department may not assess or impose and the county treasurer may not collect taxes or fees for a period other than:

(a) the current year; and

(b) the immediately previous year if the vehicle was not registered or operated on the highways of the state, regardless of the period of time since the vehicle was previously registered or operated.

(4) The department may make full and complete investigation of the tax status of the vehicle. An applicant for registration or reregistration shall submit proof from the tax or other appropriate records of the proper county at the request of the department.

(5) Revenue that accrues from the voluntary donation provided in subsection (2)(c) must be forwarded by the respective county treasurer for deposit in the state special revenue fund to the credit of an account established by the department of public health and human services to support activities related to awareness and education efforts for procurement of organ and tissue donations for anatomical gifts.

History: En. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R.C.M. 1921; amd. Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch. 158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953; amd. Sec. 1, Ch. 256, L. 1955; amd. Sec. 1, Ch. 223, L. 1957; amd. Sec. 1, Ch. 245, L. 1963; amd. Sec. 1, Ch. 290, L. 1967; amd. Sec. 9, Ch. 296, L. 1967; amd. Sec. 3, Ch. 214, L. 1971; amd. Sec. 12, Ch. 74, L. 1975; amd. Sec. 1, Ch. 55, L. 1977; amd. Sec. 1, Ch. 521, L. 1977; amd. Sec. 43, Ch. 566, L. 1977; R.C.M. 1947, 53-114(1), (3); amd. Sec. 4, Ch. 502, L. 1979; amd. Sec. 7, Ch. 712, L. 1979; amd. Sec. 23, Ch. 614, L. 1981; amd. Sec. 1, Ch. 433, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 16, Ch. 516, L. 1985; amd. Sec. 4, Ch. 421, L. 1987; amd. Sec. 21, Ch. 611, L. 1987; amd. Sec. 6, Ch. 724, L. 1991; amd. Sec. 131, Ch. 27, Sp. L. November 1993; amd. Sec. 2, Ch. 88, L. 1995; amd. Sec. 3, Ch. 257, L. 1995; amd. Sec. 22, Ch. 200, L. 1997; amd. Sec. 20, Ch. 496, L. 1997; amd. Sec. 1, Ch. 94, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 94 inserted (1)(e) requiring the application to contain a space for indicating the desire to donate to the promotion of awareness of efforts to procure organ and tissue donations; inserted (2)(c) providing for the payment of donations to promote awareness of efforts to procure organ and tissue donations; inserted (5) providing for deposit of donations into a state special revenue fund to support awareness programs for organ and tissue donations; and made minor changes in style. Amendment effective July 1, 1999.

Cross-References

Duties of County Treasurer — fees, 7-6-2111, 7-6-2131.

Suspension of property taxes for persons in military service, 10-1-606.

Motor vehicle assessment, 15-8-202.

Property tax levies, Title 15, ch. 10.

U.C.C. — security interests, Title 30, ch. 9.

Issuance of collegiate license plates, 61-3-465.

Schedule of fees for motor homes, travel trailers, and campers, 61-3-522, 61-3-523.

61-3-304. Repealed. Sec. 16, Ch. 724, L. 1991.

History: En. Sec. 4, Ch. 158, L. 1931; amd. Sec. 5, Ch. 158, L. 1933; amd. Sec. 1, Ch. 13, Ex. L. 1933; re-en. Sec. 1755.2, R.C.M. 1935; amd. Sec. 1, Ch. 88, L. 1943; R.C.M. 1947, 53-103; amd. Sec. 1, Ch. 503, L. 1985.

61-3-305. Blanks to be provided. It is the duty of the department to provide blank application forms and to furnish these upon request to applicant for registration.

History: En. Sec. 2, Ch. 75, L. 1917; re-en. Sec. 1756, R.C.M. 1921; re-en. Sec. 1756, R.C.M. 1935; amd. Sec. 2, Ch. 88, L. 1943; R.C.M. 1947, 53-105; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 7, Ch. 724, L. 1991.

Cross-References

Duties of Department of Justice, 61-3-101.

61-3-306 through 61-3-310 reserved.

61-3-311. Time for making application. Registration must be renewed annually, and license fees must be paid annually. Except as provided in 61-3-313 through 61-3-316, 61-3-318, 61-3-526, and 61-3-721, all registrations expire on December 31 of the year in which they are issued and application for registration or reregistration must be filed with the county treasurer not later than February 15 of each year. If the ownership of a motor vehicle is transferred during the registration year, the motor vehicle must be reregistered and relicensed as provided by statute.

History: En. Subd. 2, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.1, R.C.M. 1935; amd. Sec. 1, Ch. 51, L. 1967; amd. Sec. 9, Ch. 127, L. 1969; amd. Sec. 13, Ch. 74, L. 1975; R.C.M. 1947, 53-115; amd. Sec. 2, Ch. 146, L. 1989; amd. Sec. 1, Ch. 42, L. 1995.

Cross-References

Issuance of collegiate license plates, 61-3-465.

61-3-312. Renewal of registration — exceptions — grace period. (1) Except as provided in 61-3-314, 61-3-318, 61-3-526, and 61-3-721, a vehicle registration under this chapter expires on December 31 of each year and must be renewed annually upon application and payment of license fees as provided in 61-3-303 and 61-3-321. The renewal takes effect on January 1 of each year. The certificate of registration is valid only during the registration year for which it is issued.

(2) The owner of a vehicle registered under the provisions of this section may operate the vehicle between January 1 and February 15 without displaying the registration certificate of the current year if, during the period, the owner displays upon the vehicle the number plates or plate assigned for the previous year.

History: En. Subd. 2, Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758.1, R.C.M. 1935; amd. Sec. 1, Ch. 244, L. 1955; amd. Sec. 1, Ch. 146, L. 1957; amd. Sec. 1, Ch. 100, L. 1959; amd. Sec. 25, Ch. 121, L. 1965; amd. Sec. 1, Ch. 116, L. 1969; amd. Sec. 8, Ch. 127, L. 1969; amd. Sec. 1, Ch. 138, L. 1971; amd. Sec. 2, Ch. 214, L. 1971; amd. Sec. 11, Ch. 74, L. 1975; R.C.M. 1947, 53-108(part); amd. Sec. 3, Ch. 146, L. 1989; amd. Sec. 2, Ch. 42, L. 1995.

Cross-References

Issuance of collegiate license plates, 61-3-465.

61-3-313. Vehicles subject to staggered registration. For purposes of 61-3-313 through 61-3-316, "vehicle" means a motor vehicle, as defined in 61-1-102, that is subject to annual registration in this state except:

(1) vehicles owned or leased and operated by the government of the United States or by the state of Montana or a political subdivision of the state;

(2) mobile homes and motor homes;

(3) vehicles that are registered in accordance with or subject to 61-3-332(10)(c)(i)(A), 61-3-411, or 61-3-421;

(4) trucks exceeding a 1-ton rated capacity;

(5) trailers, semitrailers, tractors, buses, motorcycles, quadricycles, and motor-driven cycles;

(6) special mobile equipment as defined in 61-1-104;

(7) motor vehicles registered as part of a fleet under 61-3-318; and

(8) apportionable vehicles registered as part of a fleet, as defined in 61-3-712, that is subject to the provisions of 61-3-711 through 61-3-733.

History: En. 53-154 by Sec. 1, Ch. 74, L. 1975; R.C.M. 1947, 53-154; amd. Sec. 1, Ch. 82, L. 1979; amd. Sec. 17, Ch. 516, L. 1985; amd. Sec. 2, Ch. 517, L. 1989; amd. Sec. 17, Ch. 724, L. 1991; amd. Sec. 2, Ch. 209, L. 1993; amd. Sec. 3, Ch. 42, L. 1995; amd. Sec. 3, Ch. 88, L. 1995.

Cross-References

Motor vehicle assessment, 15-8-202.

Motorcycle defined, 61-1-105.

Quadricycle defined, 61-1-133.

Fleet registration period, 61-3-318.

Assessment, 61-3-503.

Taxes — rules — exemption, 61-3-506, 61-3-507.

Standards of maximum dimensions, weights, etc., 61-10-101.

61-3-314. Registration period. (1) Notwithstanding any other provisions of this title regarding the registration of motor vehicles, each vehicle subject to the provisions of 61-3-313 through 61-3-316 must be registered for a 12-month period based upon the date it is first registered in this state pursuant to 61-3-313 through 61-3-316.

(2) There are 12 registration periods, each of which commences on the first day of a calendar month. The periods are:

(a) January 1 through January 31	1st period
(b) February 1 through February 28/29	2nd period
(c) March 1 through March 31	3rd period
(d) April 1 through April 30	4th period
(e) May 1 through May 31	5th period
(f) June 1 through June 30	6th period
(g) July 1 through July 31	7th period
(h) August 1 through August 31	8th period
(i) September 1 through September 30	9th period
(j) October 1 through October 31	10th period
(k) November 1 through November 30	11th period
(l) December 1 through December 31	12th period

History: En. 53-155, 53-156 by Secs. 2, 3, Ch. 74, L. 1975; R.C.M. 1947; 53-155, 53-156; amd. Sec. 1, Ch. 337, L. 1991; amd. Sec. 5, Ch. 604, L. 1991.

Cross-References

Vehicle and property taxes — when due, 61-3-501.

61-3-315. Reregistration on anniversary date — department to make rules. A vehicle that has once been registered for any of the periods designated in 61-3-314 must thereafter be reregistered for a like period on or before the anniversary date of the initial registration unless that period is changed as provided in this section. The anniversary date for reregistration is the last day of the month for the designated registration period. The department shall adopt rules for the implementation and administration of 61-3-313 through 61-3-316 and for the identification of the registration on the vehicles. The department shall provide for simultaneous registration of multiple vehicles that have common ownership. The rules must provide for a change of the registration period to coincide with the date an owner desires to register his vehicles.

History: En. 53-157 by Sec. 4, Ch. 74, L. 1975; amd. Sec. 1, Ch. 183, L. 1977; R.C.M. 1947, 53-157; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 64, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Motor vehicle assessment, 15-8-202.

Assessment, 61-3-503.

Taxes — rules — exemption, 61-3-506, 61-3-507.

61-3-316. New registrations under staggered registration. Vehicles which are registered for the first time in this state shall be assigned a registration period corresponding to when they are first registered in this state. The registration period for a vehicle shall thereafter remain the same from year to year.

History: En. 53-158 by Sec. 5, Ch. 74, L. 1975; R.C.M. 1947, 53-158(part).

61-3-317. New registration required for transferred vehicle — grace period — penalty — display of proof of purchase. Except as otherwise provided herein, the new owner of a transferred motor vehicle shall have a grace period of 20 calendar days from the date of purchase to make application and pay the taxes or fees, or both, provided by part 5 of this chapter, unless the tax or fee has been paid for the year, as if the vehicle were being registered for the first time in that registration year. If the motor vehicle was not purchased from a duly licensed motor vehicle dealer as provided in this chapter, it is not a violation of this chapter or any other law for the purchaser to operate the vehicle upon the streets and highways of this state without a certificate of registration during the 20-day period, provided that at all times during that period a vehicle purchase sticker in a form prescribed and furnished by the department, obtained from the county treasurer or a law enforcement officer as authorized by the department, reciting the date of purchase is clearly displayed in the rear window of the motor vehicle. Registration and license fees collected under 61-3-321 are not required to be paid when a license plate is transferred under this section and 61-3-335. Failure to make application within the time provided herein subjects the purchaser to a penalty of $10. The penalty shall be collected by the county treasurer at the time of registration and shall be in addition to the fees otherwise provided by law.

History: En. Sec. 3, Ch. 127, L. 1969; amd. Sec. 7, Ch. 138, L. 1971; amd. Sec. 1, Ch. 187, L. 1974; amd. Sec. 4, Ch. 243, L. 1977; amd. Sec. 4, Ch. 399, L. 1977; R.C.M. 1947, 53-147; amd. Sec. 32, Ch. 421, L. 1979; amd. Sec. 8, Ch. 712, L. 1979; amd. Sec. 24, Ch. 614, L. 1981; amd. Sec. 13, Ch. 503, L. 1985; amd. Sec. 1, Ch. 529, L. 1985.

Cross-References

Duties of County Treasurer, 7-6-2111.

61-3-318. Fleet registration period. (1) (a) Notwithstanding any other provisions of this title regarding the registration of motor vehicles, a person owning or leasing a fleet may register its motor vehicles for a 6-month period, commencing from the date of original registration.

(b) A vehicle remaining in the fleet at the end of a 6-month period must be reregistered for a minimum of 12 months.

(2) As used in this section, "fleet" means more than 25 automobiles or trucks having a rated capacity of three-quarters of a ton or less that are rented or offered for rental without drivers and that are designated by a rental owner as a rental fleet.

History: En. Sec. 1, Ch. 517, L. 1989.

Cross-References

Vehicles subject to staggered registration — fleet vehicles excepted, 61-3-313.

Sales tax on new fleet vehicles, 61-3-502.

Computation of tax on fleet vehicles, 61-3-504.

61-3-319 and 61-3-320 reserved.

61-3-321. Registration fees of vehicles — certain vehicles exempt from license or registration fees — disposition of fees. (1) Registration or license fees must be paid upon registration or reregistration of motor vehicles, trailers, housetrailers, and semitrailers, in accordance with this chapter, as follows:

(a) motor vehicles weighing 2,850 pounds or under (other than motortrucks), $5;

(b) motor vehicles weighing over 2,850 pounds (other than motortrucks), $10;

(c) electrically driven passenger vehicles, $10;

(d) all motorcycles and quadricycles, $2;

(e) tractors or trucks, $10;

(f) buses, which are classed as motortrucks, licensed accordingly;

(g) trailers and semitrailers less than 2,500 pounds declared weight and housetrailers of all weights, $2;

(h) trailers and semitrailers over 2,500 up to 6,000 pounds declared weight (except housetrailers), $5;

(i) trailers and semitrailers over 6,000 pounds declared weight, $10, except trailers and semitrailers registered in other jurisdictions through a proportional registration agreement;

(j) trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery, or bridge materials, new and secondhand, $15 annually, regardless of size or capacity.

(2) All rates are 25% higher for motor vehicles, trailers, and semitrailers that are not equipped with pneumatic tires.

(3) "Tractor", as specified in this section, means any motor vehicle, except a passenger car, that is used for towing a trailer or semitrailer.

(4) If a motor vehicle, housetrailer, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year is one-half of the regular fee except for trailers or semitrailers registered as provided in 61-3-721(6).

(5) An additional fee of $5.25 a year for each registration of a vehicle, except trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement, must be collected as a registration fee. Revenue from this fee must be forwarded by the respective county treasurers to the state treasurer for deposit in the general fund. The department shall pay an amount equal to 25 cents from each motor vehicle registration fee from the general fund to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.

(6) A fee of $2 for each set of new number plates must be collected when number plates provided for under 61-3-332(3) are issued. Revenue from this fee must be deposited as provided in subsection (5).

(7) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202.

(8) The provisions of this section relating to the payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335.

(9) A person qualifying under 61-3-332(10)(d) or 61-3-504 is exempt from the fees required under subsections (1) and (5) of this section. *(See compiler's comments for contingent termination of certain text.)*

History: (1) thru (4), (6), (7)En. Sec. 6, Ch. 75, L. 1917; amd. Sec. 2, Ch. 207, L. 1919; amd. Sec. 1, Ch. 199, L. 1921; re-en. Sec. 1760, R.C.M. 1921; amd. Sec. 1, Ch. 107, L. 1923; amd. Sec. 1, Ch. 88, L. 1927; amd. Sec. 1, Ch. 182, L. 1929; amd. Sec. 1, Ch. 103, L. 1933; amd. Sec. 1, Ch. 38, Ex. L. 1933; re-en. Sec. 1760, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1937; amd. Sec. 1, Ch. 125, L. 1939; amd. Sec. 2, Ch. 154, L. 1943; amd. Sec. 2, Ch. 200, L. 1945; amd. Sec. 1, Ch. 201, L. 1945; amd. Sec. 1, Ch. 221, L. 1951; amd. Sec. 1, Ch. 215, L. 1953; amd. Sec. 1, Ch. 41, L. 1955; amd. Sec. 228, Ch. 147, L. 1963; amd. Sec. 1, Ch. 178, L. 1963; amd. Sec. 30, Ch. 121, L. 1965; amd. Sec. 12-105, Ch. 197, L. 1965; amd. Sec. 4, Ch. 226, L. 1971; amd. Sec. 2, Ch. 243, L. 1977; Sec. 53-122, R.C.M. 1947; (5)En. Sec. 3, Ch. 75, L. 1917; re-en. Sec. 1757, R.C.M. 1921; amd. Sec. 2, Ch. 158, L. 1933; re-en. Sec. 1757, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1941; amd. Sec. 3, Ch. 88, L. 1943; amd. Sec. 1, Ch. 111, L. 1951; amd. Sec. 1, Ch. 29, L. 1953; amd. Sec. 1, Ch. 245, L. 1955; amd. Sec. 1,

Ch. 236, L. 1957; amd. Sec. 1, Ch. 245, L. 1959; amd. Sec. 1, Ch. 245, L. 1965; amd. Sec. 1, Ch. 41, L. 1967; amd. Sec. 5, Ch. 127, L. 1969; amd. Sec. 1, Ch. 226, L. 1971; amd. Sec. 1, Ch. 41, L. 1975; amd. Sec. 1, Ch. 390, L. 1975; amd. Sec. 1, Ch. 243, L. 1977; amd. Sec. 3, Ch. 492, L. 1977; Sec. 53-106, R.C.M. 1947; R.C.M. 1947, 53-106(part), 53-122(part); amd. Sec. 33, Ch. 421, L. 1979; amd. Sec. 7, Ch. 508, L. 1979; amd. Sec. 2, Ch. 654, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 18, Ch. 516, L. 1985; amd. Sec. 4, Ch. 378, L. 1987; amd. Sec. 10, Ch. 398, L. 1989; amd. Sec. 8, Ch. 535, L. 1989; amd. Sec. 2, Ch. 627, L. 1989; amd. Sec. 2, Ch. 654, L. 1989; amd. Secs. 3, 5, Ch. 567, L. 1991; amd. Sec. 2, Ch. 735, L. 1991; amd. Sec. 7, Ch. 575, L. 1993; amd. Sec. 1, Ch. 81, L. 1995; amd. Sec. 4, Ch. 88, L. 1995; amd. Sec. 1, Ch. 72, L. 1997; amd. Sec. 37, Ch. 532, L. 1997; amd. Sec. 1, Ch. 79, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 79 inserted (9) concerning exemption for former prisoners of war and their surviving spouses. Amendment effective January 1, 2000.

Termination — Disposition of Funds: Section 7, Ch. 567, L. 1991, provided: "(1) The provisions of [sections 1 through 6] [19-6-709 and amendments to 17-7-502 and 61-3-321] terminate upon the death of the last recipient eligible under [section 1(2)] [19-6-709(2)] for the supplemental benefit provided by [section 1] [19-6-709].

(2) Money collected for the purposes of the supplemental payment under [section 1] [19-6-709] that remains in the account, meaning the highway patrol officers' retirement pension trust fund, upon termination of [sections 1 through 6] [19-6-709 and amendments to 17-7-502 and 61-3-321] must be used to amortize unfunded liabilities of the account."

The sentence in 61-3-321(5) concerning disposition of 25 cents for supplemental benefits is the language that terminates upon occurrence of contingency.

Cross-References

State-owned motor vehicles, Title 2, ch. 17, part 4.

Duties of County Treasurer, 7-6-2111.

Fund structure, 17-2-102.

Highway patrol retirement — supplemental retirement allowance for certain retirees, 19-6-709.

Motorcycles and quadricycles used for recreation — decal required, 23-2-804.

Motorcycle defined, 61-1-105.

Truck tractor defined, 61-1-108.

Quadricycle defined, 61-1-133.

Proportional registration of fleet vehicles, 61-3-721.

Single movement permit, 61-4-310.

Permits issued to governmental entities, 61-10-127.

61-3-322. Certificates of registration — issuance. (1) Upon completion of the application for registration on forms furnished by the department, the county treasurer shall file one copy in the treasurer's office and issue to the applicant two copies of the application marked "Owner's Certificate of Registration and Payment Receipt", one of which must be marked "file copy".

(2) The certificate of registration must contain upon the face of the certificate the information described in 61-3-202(2).

(3) The registration receipt, a photostatic copy of the receipt acknowledged by the county treasurer or a deputy county treasurer, a notarized photostatic copy, or a duplicate furnished by the department must at all times be carried in the vehicle to which it refers or must be carried by the person driving or in control of the vehicle, who shall display it upon demand of a police officer or any officer or employee of the department or the transportation department.

(4) The county treasurer shall daily forward to the department one copy of all applications for registration received that day.

(5) It is not necessary for the county treasurer to segregate the amount of taxes or fees for state, county, school district, and municipal purposes in the receipt.

History: (1) thru (3)En. Sec. 4, Ch. 75, L. 1917; re-en. Sec. 1758, R.C.M. 1921; amd. Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758, R.C.M. 1935; amd. Sec. 5, Ch. 72, L. 1937; amd. Sec. 1, Ch. 148, L. 1943; amd. Sec. 1, Ch. 63, L. 1945; amd. Sec. 1, Ch. 115, L. 1953; amd.

Sec. 1, Ch. 200, L. 1955; amd. Sec. 1, Ch. 139, L. 1961; amd. Sec. 7, Ch. 127, L. 1969; amd. Sec. 1, Ch. 179, L. 1971; amd. Sec. 1, Ch. 104, L. 1975; Sec. 53-107, R.C.M. 1947; (4), (5)En. Subd. 3, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.2, R.C.M. 1935; amd. Sec. 3, Ch. 72, L. 1937; amd. Sec. 1, Ch. 199, L. 1955; Sec. 53-116, R.C.M. 1947; R.C.M. 1947, 53-107(part), 53-116(part); amd. Sec. 35, Ch. 421, L. 1979; amd. Sec. 5, Ch. 502, L. 1979; amd. Sec. 9, Ch. 712, L. 1979; amd. Sec. 25, Ch. 614, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 5, Ch. 363, L. 1989; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 2, Ch. 365, L. 1993.

Cross-References

Duties of County Treasurer, 7-6-2111.

Penalty for violations, 61-3-601.

Used motor vehicles — transfer to and from dealers, 61-4-111.

Excess weight — penalties, 61-10-233.

Enforcement by Department of Transportation personnel, Title 61, ch. 12, part 2.

61-3-323. Definitions. As used in 61-3-323 through 61-3-325, unless the context requires otherwise, the following definitions apply:

(1) "Domicile" means the county in which a motor vehicle is most frequently used, dispatched, or controlled.

(2) "Fleet" means 100 or more motor vehicles owned or leased by a person operating the vehicles in this state.

History: En. Sec. 1, Ch. 61, L. 1989.

61-3-324. Fleet registration — application — additions to and deletions from fleet. (1) A person owning or leasing a fleet may apply to the department of transportation to register the fleet annually through the department of transportation in lieu of registering each motor vehicle in its domicile.

(2) The application for fleet registration must:

(a) be submitted to the department of transportation prior to November 1 of each year;

(b) include a list of the motor vehicles in the fleet;

(c) include the current registration receipt for each motor vehicle; and

(d) include any other relevant information required by the department of transportation.

(3) A motor vehicle may be added to the fleet.

(4) A motor vehicle may be removed from a fleet if the owner of the fleet surrenders to the department of transportation the current registration receipt and the license plate for the vehicle no later than December 31. If the receipt or license plate has been lost or stolen, the owner shall submit an affidavit explaining why he is not able to surrender the receipt or license plate.

History: En. Sec. 2, Ch. 61, L. 1989; amd. Sec. 3, Ch. 512, L. 1991.

61-3-325. Vehicles subject to staggered registration — fees and taxes — disposition. (1) Any motor vehicle in the fleet that is subject to staggered registration under 61-3-313 through 61-3-316 may be registered as part of the fleet on the following fleet renewal date. The department of transportation shall collect the remaining fees and taxes due for the registration year after crediting the registrant for the period that was previously paid.

(2) (a) The department of transportation shall compute fees and taxes due on each motor vehicle in the fleet as provided in part 5 of this chapter, based on its domicile.

(b) The department of transportation shall also collect a registration fee of $7.50 for each motor vehicle in the fleet in lieu of the registration fee provided for in 61-3-321. The department shall retain $4.50 of each registration fee for administrative costs and forward the remaining $3 to the state treasurer for deposit in the general fund in lieu of the fee provided in 61-3-321(5).

(c) All fees and taxes must be paid no later than February 15 each year.

(d) The fees and taxes collected must be distributed by the department of transportation as provided in 61-3-321 and part 5 of this chapter, based on the domicile of each motor vehicle.

History: En. Sec. 3, Ch. 61, L. 1989; amd. Sec. 14, Ch. 398, L. 1989; amd. Sec. 3, Ch. 512, L. 1991.

61-3-326 through 61-3-330 reserved.

61-3-331. Assignment of number plates. The county treasurer shall, at the time of issuing a registration receipt under 61-3-322, assign such motor vehicle a distinctive number, viz., the license plate number, and deliver to the applicant two license plates, as received from the department, which shall bear such distinctive numbers. The department shall ship said license plates to the various county treasurers by freight, so that they will be received by the county treasurer on or before January 1 of each year.

History: En. Subd. 3, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.2, R.C.M. 1935; amd. Sec. 3, Ch. 72, L. 1937; amd. Sec. 1, Ch. 199, L. 1955; R.C.M. 1947, 53-116(part); amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Duties of County Treasurer, 7-6-2111.

Duties of Department of Justice, 61-3-101.

61-3-332. Number plates. (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle. The number plates are in 10 series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that bear the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that bear the distinctive letters "UD" or the letter "U" and the word "DEALER", one for dealers in trailers and/or semitrailers (new or used) that bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER", one for dealers in recreational vehicles that bear the distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates. All markings for the various kinds of dealers' plates must be placed on the number plates assigned to the dealer, in the position that the department designates.

(2) All number plates for motor vehicles must be issued for a maximum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(3) (a) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after December

31, 1999, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(b) Beginning January 1, 2000, the department shall manufacture and issue new number plates every 4 years.

(4) In the case of motorcars and trucks, plates must be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" and the year must be placed across the plates. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of tax-exempt motor vehicles, in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned to trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.

(8) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. A registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, persons with disabilities, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, national guard veterans, legion of valor members, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) (i) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(ii) The department may issue national guard veteran plates, bearing a design or decal displaying the Montana national guard insignia and the words "National Guard veteran" and numbered in sets of two with a different number on each set, to an applicant who presents to the department a copy of certification of national guard retirement eligibility issued by the appropriate authorities for the applicant or the applicant's deceased spouse and who pays, in addition to all taxes and fees required by parts 3 and 5 of this chapter, a national guard veteran license plate fee of $10. The additional fee must be distributed in accordance with the provisions of subsection (10)(f)(iii) and (10)(f)(iv).

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) (i) A resident of Montana who is a veteran of the armed forces of the United States and who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of proof of the 100% disability, be issued:

(A) a special license plate under this section with a design or decal displaying the letters "DV"; or

(B) one set of any other military-related plates that the disabled veteran is eligible to receive under this section.

(ii) The fee for original or renewal registration by a 100% disabled veteran for a passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter.

(iii) Special license plates issued to a disabled veteran are not transferable to another person.

(iv) A disabled veteran is not entitled to a special disabled veteran's license plate for more than one vehicle.

(v) A vehicle lawfully displaying a disabled veteran's plate and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under this title.

(d) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(i) Fees required under 61-3-321(1) and (5) may not be assessed upon one set of license plates issued to an ex-prisoner of war under this subsection (10)(d).

(ii) A special license plate fee may not be assessed upon one set of special license plates issued to an ex-prisoner of war under this subsection (10)(d).

(iii) An ex-prisoner of war is exempt from the light vehicle taxes imposed under 61-3-504 for one vehicle that displays a set of ex-prisoner of war license plates.

(iv) A surviving spouse of an ex-prisoner of war may retain the special license plates that have been issued to the ex-prisoner of war if the spouse complies with the provisions of 61-3-457.

(e) Except as provided in subsections (10)(c) and (10)(d), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (10)(e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under subsection (10)(d) and this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Except as provided in subsections (10)(c) and (10)(d), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10. Upon an original application for a license under this subsection (10)(f), the county treasurer shall:

(A) deposit $3 of the special fee in the county general fund;

(B) remit $1 for deposit in the state general fund; and

(C) deposit the remainder of the special fee in the state special revenue account established in 10-2-603 for administration, construction, operation, and maintenance of the state veterans' cemeteries.

(iv) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (10)(f)(iii)(C).

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(h) The department may issue legion of valor license plates, bearing a design or decal depicting the recognized legion of valor medallion and numbered in sets of two with a different number on each set, to an applicant who presents to the department proper documentation of receipt of a legion of valor award by appropriate authorities to the applicant or the applicant's deceased spouse and who pays all taxes and fees required by parts 3 and 5 of this chapter.

(11) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733.

History: En. Sec. 3, Ch. 75, L. 1917; re-en. Sec. 1757, R.C.M. 1921; amd. Sec. 2, Ch. 158, L. 1933; re-en. Sec. 1757, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1941; amd. Sec. 3, Ch. 88, L. 1943; amd. Sec. 1, Ch. 111, L. 1951; amd. Sec. 1, Ch. 29, L. 1953; amd. Sec. 1, Ch. 245, L. 1955; amd. Sec. 1, Ch. 236, L. 1957; amd. Sec. 1, Ch. 245, L. 1959; amd. Sec. 1, Ch. 245, L. 1965; amd. Sec. 1, Ch. 41, L. 1967; amd. Sec. 5, Ch. 127, L. 1969; amd. Sec. 1, Ch. 226, L. 1971; amd. Sec. 1, Ch. 41, L. 1975; amd. Sec. 1, Ch. 390, L. 1975; amd. Sec. 1, Ch. 243, L. 1977; amd. Sec. 3, Ch. 492, L. 1977; R.C.M. 1947, 53-106(part); amd. Sec. 26, Ch. 614, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 19, Ch. 516, L. 1985; amd. Sec. 4, Ch. 674, L. 1985; amd. Sec. 22, Ch. 611, L. 1987; amd. Sec. 1, Ch. 654, L. 1989; amd. Sec. 2, Ch. 632, L. 1991; amd. Sec. 1, Ch. 83, L. 1993; amd. Sec. 2, Ch. 159, L. 1993; amd. Sec. 3, Ch. 209, L. 1993; amd. Sec. 2, Ch. 81, L. 1995; amd. Sec. 2, Ch. 72, L. 1997; amd. Sec. 10, Ch. 109, L. 1997; amd. Sec. 72, Ch. 472, L. 1997; amd. Sec. 2, Ch. 79, L. 1999; amd. Sec. 1, Ch. 344, L. 1999; amd. Sec. 1, Ch. 570, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 79 inserted (10)(d)(i) through (10)(d)(iv) concerning exemption from taxes and fees for former prisoners of war and their surviving spouses; in (10)(e) in two places inserted reference to subsection (10)(d); in (10)(f)(iii) inserted reference to subsection (10)(d); and made minor changes in style. Amendment effective January 1, 2000.

Chapter 344 in third sentence in (10) inserted "national guard veterans, legion of valor members"; inserted (10)(a)(ii) authorizing department to issue national guard veteran license plates, describing plate design requirements, and imposing $10 fee; inserted (10)(h) authorizing department to issue legion of valor license plates upon payment of taxes and fees; and made minor changes in style. Amendment effective January 1, 2000.

Chapter 570 in (2) near middle of first sentence after "issued for a" substituted "maximum" for "minimum"; in (3)(a) at end inserted "and it shall manufacture the newly designed number plates for issuance after December 31, 1999, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date"; inserted (3)(b) requiring manufacture and issuance of new number plates every 4 years; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 4, Ch. 344, L. 1999, provided: "[This act] is effective January 1, 2000, and applies to registrations of motor vehicles occurring after December 31, 1999."

Applicability: Section 3, Ch. 570, L. 1999, provided: "[This act] applies to the registration of motor vehicles and the display of license plates issued after December 31, 1999."

Cross-References

Creation of new counties, Title 7, ch. 2, part 22.

Tax-exempt property categories, 15-6-201.

Special parking permits, Title 49, ch. 4, part 3.

Handicapped — special parking permit, 49-4-304.

Motorcycle defined, 61-1-105.

Truck defined, 61-1-107.

Truck tractor defined, 61-1-108.

Road tractor defined, 61-1-110.

Trailer defined, 61-1-111.

Semitrailer defined, 61-1-112.

Quadricycle defined, 61-1-133.

Duties of Department of Justice, 61-3-101.

Special license plates for disabled veterans, handicapped persons, and ex-prisoners of war, 61-3-446, 61-3-452, 61-3-453.

Collegiate license plates, 61-3-463.

61-3-333. Replacing number plates. In the event of loss, mutilation, or destruction of number plates, and/or validation devices, the owner of the registered motor vehicle may obtain from the department duplicates or replacements of the number plates upon filing sworn declaration showing that fact and payment of a fee of $2. In the event of loss, mutilation, or destruction of pioneer plates, duplicates may be obtained in the same manner upon payment of a fee of $5.

History: En. Subd. 7, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.6, R.C.M. 1935; amd. Sec. 1, Ch. 47, L. 1955; amd. Sec. 1, Ch. 86, L. 1969; amd. Sec. 3, Ch. 226, L. 1971; R.C.M. 1947, 53-120; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 9, Ch. 724, L. 1991.

Cross-References

Department of Justice — disposition of fees, 61-3-108.

61-3-334. Expiration of registration on transfer of ownership of vehicle — duty to remove plates. Upon the transfer of ownership of a motor vehicle, the registration of the motor vehicle shall expire and it shall be the duty of the transferor immediately to remove the license plates from the vehicle.

History: En. Sec. 1, Ch. 127, L. 1969; R.C.M. 1947, 53-145.

Cross-References

Penalty for violations, 61-3-601.

61-3-335. Transfer of license plates to another motor vehicle. (1) Should the transferor make application for the registration of another motor vehicle at any time during the remainder of the current registration year as shown on the original certificate of registration, he may file an application in the office of the county treasurer where the motor vehicle is registered, upon a form to be prepared and furnished by the department, accompanied by the original certificate of registration, for the transfer of the license plates. The application for transfer of the license plates from the motor vehicle for which originally issued to a motor vehicle acquired by the same person in whose name the original license plates were issued shall be made within 20 days from date of acquiring the vehicle. The use of the license plates shall not be legalized until proper transfer of license plates has been made.

(2) License plates may be transferred pursuant to this section without transferring ownership of the first vehicle.

(3) Upon transfer of the license plates, the registration of the motor vehicle from which the license plates were transferred expires. The certificate of registration for such vehicle must be surrendered to the county treasurer with the application for transfer.

History: En. Sec. 2, Ch. 127, L. 1969; amd. Sec. 6, Ch. 138, L. 1971; amd. Sec. 3, Ch. 243, L. 1977; R.C.M. 1947, 53-146; amd. Sec. 1, Ch. 106, L. 1979; amd. Sec. 1, Ch. 415, L. 1979; amd. Sec. 27, Ch. 614, L. 1981; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Duties of County Treasurer, 7-6-2111.

61-3-336. Recycling license plates. The department is authorized to promote the recycling of used or outdated license plates for the metal content and may enter into contractual agreements with nonprofit organizations for the collection of used or outdated license plates and for their transportation to a central recycling point.

History: En. Sec. 1, Ch. 96, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Public contracts generally, Title 18, ch. 1.

Motor vehicle recycling and disposal, Title 75, ch. 10, part 5.

61-3-337 through 61-3-340 reserved.

61-3-341. Lost certificates. In the event any certificate of registration shall be lost, mutilated, or become illegible, the person to whom the same shall have been issued shall immediately make application for and may obtain a duplicate thereof, upon furnishing satisfactory information to the department of such facts and upon payment of a fee of $2.

History: En. Subd. 6, Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758.5, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1953; amd. Sec. 28, Ch. 121, L. 1965; R.C.M. 1947, 53-113(part); amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Department of Justice — disposition of fees, 61-3-108.

Certificates of ownership — lost certificates, 61-3-204.

61-3-342. Temporary window sticker. (1) Any purchaser of a motor vehicle who is unable to fully complete the process of applying for a Montana title at the time he makes application for registration or reregistration of the vehicle because the certificate of ownership is lost, in the possession of third parties, or in the process of reissuance in this state or elsewhere may, upon making affidavit to that effect upon a form prescribed by the department and upon the payment of all applicable fees and taxes, plus an additional fee of $2 to be collected by the county treasurer and remitted to the department, obtain from the county treasurer of the county in which the vehicle is to be registered a temporary window sticker of such size, color, and design as the department may prescribe, to be validated by the county treasurer for a period of 60 days from the date of issuance. The purchaser, upon displaying the sticker on the upper left-hand corner of the rear window of the motor vehicle, may operate the vehicle during the period for which the window sticker has been validated without displaying the registration certificate or number plates or plate for the current year. The county treasurer may not sell, and no person may purchase, more than one 60-day temporary window sticker for any vehicle, the ownership of which has not changed since the issuance of the previous 60-day window sticker.

(2) A vehicle for which an application for title cannot be completed may not be registered by the county treasurer nor may license plates for the vehicle be issued by the county treasurer until the completed certificate of ownership or application for title is presented for the purpose of transferring ownership.

(3) In the event an unusual circumstance prevents the owner of a vehicle from presenting the certificate of ownership within the 60-day period permitted under subsection (1), the owner may apply to the motor vehicle division for an extended temporary window sticker on an application form provided by the division. The form must be accompanied by the title application.

(4) Upon receipt of an application for an extended temporary window sticker and title as designated in subsection (3), the motor vehicle division or the county treasurer, with the authorization of the motor vehicle division, may issue an extended temporary window sticker, valid for an additional 60 days, upon payment of a fee of $10 that must be deposited in the general fund. At

the end of the extended 60-day period or in the event the request for extension is rejected by the department for cause, the owner may obtain a certificate of ownership by the method provided in 61-3-208.

History: En. Sec. 5, Ch. 138, L. 1971; R.C.M. 1947, 53-109.3; amd. Sec. 28, Ch. 614, L. 1981; amd. Sec. 1, Ch. 209, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 6, Ch. 604, L. 1991.

Cross-References

Duties of County Treasurer — fees, 7-6-2111, 7-6-2131.

Department of Justice — disposition of fees, 61-3-108.

Penalty for violations, 61-3-601.

61-3-343 and 61-3-344 reserved.

61-3-345. County motor vehicle computer system. (1) The department shall maintain a statewide online computer system to be used to register and reregister motor vehicles, boats, snowmobiles, and off-highway vehicles.

(2) The department shall establish the user advisory group to assist in the development of policies governing the registration and reregistration of motor vehicles, boats, snowmobiles, and off-highway vehicles. The user advisory group must be appointed by the attorney general and must include:

(a) an employee of the department of administration, data processing division, selected by the division administrator;

(b) two county treasurers, selected by the Montana county treasurers association;

(c) one county motor vehicle section supervisor, selected by the Montana county treasurers association;

(d) an employee of the department of revenue who is engaged in property assessment, selected by the director of the department of revenue;

(e) an employee of the department of justice, data processing division, selected by the division administrator;

(f) an employee of the department of justice, motor vehicle division, registrar's bureau, selected by the division administrator;

(g) an employee of the department of justice, motor vehicle division, driver services bureau, selected by the division administrator;

(h) a member of the Montana bankers' association, selected by the association director;

(i) a member of the Montana automobile dealers association, selected by the association director; and

(j) a member or employee of the Montana American automobile association, selected by the association director.

(3) Committee members who are not employees of the state of Montana shall serve a term of 2 years, and state employee members shall serve at the pleasure of the attorney general.

(4) Travel and per diem expenses for the committee must be charged to the motor vehicle division.

(5) Secretarial and support services for the committee must be provided by the motor vehicle division.

(6) The committee shall meet no more than four times a year unless specifically called by the attorney general.

History: En. Sec. 12, Ch. 604, L. 1991; amd. Sec. 132, Ch. 27, Sp. L. November 1993.

61-3-346. County motor vehicle computer committee. (1) There is a county motor vehicle computer committee.

(2) The committee is allocated to the department of justice for administrative purposes only as provided in 2-15-121.

(3) The committee consists of:

(a) an employee of the information service division of the department of administration, appointed by the director of the department of administration;

(b) two county treasurers, appointed by the Montana county treasurers association; and

(c) two employees of the department of justice, appointed by the attorney general.

History: En. Sec. 13, Ch. 604, L. 1991.

61-3-347. Duties of county motor vehicle computer committee. (1) The county motor vehicle computer committee shall:

(a) establish the requirements and specifications for the county motor vehicle computer system to be used by county treasurers and the department of justice to register and reregister motor vehicles, boats, snowmobiles, and off-highway vehicles;

(b) approve the purchase of computer equipment, including peripherals, to be used for the registration and reregistration of motor vehicles, boats, snowmobiles, and off-highway vehicles;

(c) approve the procedures for the development of the county motor vehicle computer system provided for in 61-3-345 and for training in the use of that system.

(2) As used in this section, "computer system" means the county motor vehicle application system and does not include the central computer centers or imply that the department of administration is responsible for establishing policy and operating and maintaining central computer centers.

History: En. Sec. 14, Ch. 604, L. 1991.

Part 4
Special Registration

Part Cross-References

Confidential license plates and registrations, Title 44, ch. 4, part 2.

61-3-401. Definition of personalized license plates. Personalized license plates, as used in 61-3-401 through 61-3-406, mean license plates that have displayed upon them the registration number assigned to the passenger motor vehicle for which such registration number was issued in a combination of letters or numbers, or both, requested by the owner of the vehicle.

History: En. 53-150 by Sec. 3, Ch. 257, L. 1973; R.C.M. 1947, 53-150.

61-3-402. Personalized license plates authorized. Any person who is the registered owner of a motor vehicle, a truck, motor home, camping trailer, motorcycle, quadricycle, or other vehicle for the owner's personal use registered with the department or who makes application for original registration of a motor vehicle may upon payment of the fee prescribed in 61-3-406 apply to the department for personalized license plates in the manner prescribed in

61-3-405, which plates shall be affixed to the motor vehicle for which registration is sought in lieu of the regular license plates provided for in this chapter.

History: En. 53-148 by Sec. 1, Ch. 257, L. 1973; amd. Sec. 1, Ch. 53, L. 1975; R.C.M. 1947, 53-148; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 20, Ch. 516, L. 1985.

Cross-References

Motor vehicle defined, 61-1-102.
Motorcycle defined, 61-1-105.
Truck defined, 61-1-107.
Camper defined, 61-1-129.
Motor home defined, 61-1-130.
Quadricycle defined, 61-1-133.

61-3-403. Color and design of personalized license plates — exception — county designation. (1) Except as provided in 61-3-466, the personalized license plates must be the same color and design as regular passenger motor vehicle license plates and must consist of numbers or letters, or any combination thereof, not exceeding eight positions and not less than two positions, provided that there are no conflicts with existing passenger, commercial, trailer, motorcycle, quadricycle, or special license plate series under this title.

(2) Upon the issuance of personalized license plates or upon the reregistration of any motor vehicle assigned personalized license plates that do not bear a county designation or no longer bear the correct county designation, the department shall provide nonremovable stickers bearing the appropriate county designation, which must be affixed to the license plates in use in accordance with instructions by the department.

History: En. 53-149 by Sec. 2, Ch. 257, L. 1973; R.C.M. 1947, 53-149; amd. Sec. 1, Ch. 318, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 21, Ch. 516, L. 1985; amd. Sec. 8, Ch. 661, L. 1989.

Cross-References

Collegiate license plates, 61-3-463.

61-3-404. Personalized license plates restricted to registered owner. Personalized license plates shall be issued only to the registered owner of the vehicle upon which they are displayed.

History: En. 53-151 by Sec. 4, Ch. 257, L. 1973; R.C.M. 1947, 53-151.

Cross-References

Certificates of ownership, Title 61, ch. 3, part 2.

61-3-405. Application for personalized plates. An applicant for personalized license plates or renewal of such plates in subsequent years pursuant to 61-3-401 through 61-3-406 shall file an application therefor in the form and by the date the department requires, indicating thereon the combination of letters or numbers, or both, requested as a registration number. There shall be no duplication of registration numbers, and the department may refuse to issue any combination of letters or numbers, or both, that may carry connotations offensive to good taste and decency or which are misleading or a duplication of license plates provided for elsewhere in this title.

History: En. 53-152 by Sec. 5, Ch. 257, L. 1973; R.C.M. 1947, 53-152; amd. Sec. 36, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Personalized collegiate license plates, 61-3-466.

61-3-406. Fees for personalized plates — disposition. (1) In addition to all other fees and taxes imposed by law, the applicant for a personalized license plate shall pay a fee of $25 for the original personalized license plate and a fee of $10 for each transfer or renewal thereof.

(2) The revenue derived from the fee as provided herein must be deposited as follows:

(a) $5 of the application fee and $5 of the transfer or renewal fee in the county general fund; and

(b) $20 of the application fee and $5 of the transfer or renewal fee in the state general fund.

History: En. 53-153 by Sec. 6, Ch. 257, L. 1973; R.C.M. 1947, 53-153; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 141, L. 1989; amd. Sec. 11, Ch. 398, L. 1989.

Cross-References

Fund structure, 17-2-102.

Department of Justice — disposition of fees, 61-3-108.

61-3-407. Personalized veterans', national guard veterans', or legion of valor members' license plates. (1) Subject to the provisions of 61-3-405 and 61-3-406, an application for veterans', national guard veterans', or legion of valor members' license plates under 61-3-332(10)(a)(ii), (10)(f), or (10)(h) may be combined with an application for personalized plates.

(2) An application for personalized veterans', national guard veterans', or legion of valor members' license plates must be made on a form supplied by the department.

History: En. Sec. 1, Ch. 126, L. 1995; amd. Sec. 2, Ch. 344, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 344 in (1) and (2) inserted "national guard veterans', or legion of valor members'"; in (1) substituted "61-3-332(10)(a)(ii), (10)(f), or (10)(h)" for "61-3-332(10)(f)"; and made minor changes in style. Amendment effective January 1, 2000.

Effective Date — Applicability: Section 4, Ch. 344, L. 1999, provided: "[This act] is effective January 1, 2000, and applies to registrations of motor vehicles occurring after December 31, 1999."

Cross-References

Disabled veterans' plates limited to one automobile or truck, 61-3-453.

61-3-408 through 61-3-410 reserved.

61-3-411. Registration of a motor vehicle owned and operated solely as a collector's item. (1) An owner of a motor vehicle more than 30 years old, used solely as a collector's item and not for general transportation purposes, may file with the department an application for the registration of the motor vehicle. The application must be sworn to before an officer authorized to administer oaths. The application must state:

(a) the name and address of the owner;

(b) the name and address of the person from whom purchased;

(c) the make, the gross weight, the year and number of the model, and the manufacturer's identification number and serial number of the motor vehicle; and

(d) that the vehicle is owned and operated solely as a collector's item and not for general transportation purposes.

(2) The registration fee for a motor vehicle registered under subsection (1) is:

(a) for a vehicle weighing 2,850 pounds or less, $5; and

(b) for a vehicle weighing more than 2,850 pounds, $10.

(3) Upon receipt of the application for registration and payment of the registration fee, the department shall file the application and register the motor vehicle therein described in the manner specified in 61-3-101 and, unless the applicant chooses to exercise the option allowed in 61-3-412, shall deliver to the applicant:

(a) for a motor vehicle manufactured in 1933 or earlier, two license plates bearing the inscription "Pioneer—Montana" and the registration number; or

(b) for a motor vehicle manufactured in 1934 or later and more than 30 years old, two license plates bearing the inscription "Vintage—Montana" and the registration number.

(4) The year of issuance may not be shown on the plates.

(5) Annual renewal of the registration of a motor vehicle registered under this section is not required, and the registration is valid as long as the vehicle is in existence; provided, however, that upon sale of the motor vehicle, the purchaser shall renew the registration and pay the license fees provided in subsection (2).

History: En. 53-106.1 by Sec. 1, Ch. 123, L. 1955; amd. Sec. 1, Ch. 86, L. 1963; amd. Sec. 1, Ch. 422, L. 1973; R.C.M. 1947, 53-106.1; amd. Sec. 37, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 150, L. 1989.

Cross-References

Department of Justice — disposition of fees, 61-3-108.

Vehicles subject to staggered registration, 61-3-313.

61-3-412. Display of original Montana license plates on collector's item vehicle — definition — validation. (1) As used in this section, "original Montana license plate" means a license plate issued according to the provisions of 61-3-331; section 53-116, R.C.M. 1947; section 1759.1, R.C.M. 1935; or section 1759, R.C.M. 1921; whichever section was effective during the year of the manufacture of the motor vehicle on which the license plate is authorized to be displayed.

(2) Notwithstanding the provisions of 61-3-332, the department shall authorize the owner of a motor vehicle registered as provided in 61-3-411 to display original Montana license plates, with validation as required in subsection (3), after:

(a) payment of the fee required in subsection (5);

(b) inspection by a highway patrol officer of the original Montana license plate to be displayed on the motor vehicle and, upon payment of a $5 fee, receipt of the highway patrolman's certification that he has determined the license plate is legible and meets the requirements of subsection (1); and

(c) receipt of an application by the owner of the motor vehicle as provided for in 61-3-411.

(3) If the owner of a vehicle registered under the provisions of 61-3-314 meets the requirements of subsection (2), the department shall:

(a) file the application and register information on the motor vehicle in the manner prescribed in 61-3-101; and

(b) issue a validating decal inscribed with:

(i) a unique number; and

(ii) the letter:

(A) "P" to designate vehicles described in 61-3-411(3)(a); or

(B) "V" to designate vehicles described in 61-3-411(3)(b).

(4) The owner of the motor vehicle shall permanently affix the validating decal to the windshield of the collector's item motor vehicle or, if no windshield exists, to another prominent and visible position on the vehicle.

(5) The owner of the motor vehicle shall pay to the department with the application required under this section a one-time special collector's item motor vehicle license fee of $20.

History: En. Sec. 2, Ch. 150, L. 1989; amd. Sec. 1, Ch. 217, L. 1989.

61-3-413 through 61-3-420 reserved.

61-3-421. Amateur radio operators — special license plate. A motor vehicle owner and resident of this state who holds an unrevoked and unexpired official amateur radio station license and operator's license, "conditional" or higher class, issued by the federal communications commission of the United States, upon written application on a form prescribed by the department, accompanied by proof of ownership of the amateur radio station license and operator's license, must be issued lettered license plates in pairs (two identically lettered plates), in lieu of the regular license plates prescribed by law. There must be stamped or impressed upon the special license plates in clear lettering the official amateur radio call letters of the owner as assigned to the owner by the federal communications commission, and the plates so lettered must be renewed as provided in 61-3-312.

History: En. Sec. 1, Ch. 2, L. 1957; amd. Sec. 1, Ch. 62, L. 1959; R.C.M. 1947, 53-106.2; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 635, L. 1989.

Cross-References

Vehicles subject to staggered registration, 61-3-313.

61-3-422. Issuance — application — additional fee. The department shall issue lettered license plates as provided in 61-3-421 to amateur radio operators upon:

(1) application showing proof that the applicant is the owner and holder of an amateur radio station license and operator's license;

(2) compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles;

(3) payment, or proof of payment, of all other fees and taxes applicable to regular motor vehicle license plates; and

(4) payment of a $5 additional fee.

History: En. Sec. 2, Ch. 2, L. 1957; amd. Sec. 2, Ch. 62, L. 1959; R.C.M. 1947, 53-106.3; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 2, Ch. 635, L. 1989.

Cross-References

Department of Justice — disposition of fees, 61-3-108.

61-3-423. Rules — limit of one identical pair of plates for each operator. The department shall make such rules as may be necessary to procure compliance with all the laws of the state regulating the issuance of motor vehicle licenses relating to the use and operation of motor vehicles before issuing the lettered license plates. The department shall not issue more than one identical pair of lettered license plates for any licensed amateur radio station in any one licensing period.

History: En. Sec. 3, Ch. 2, L. 1957; amd. Sec. 3, Ch. 62, L. 1959; R.C.M. 1947, 53-106.4; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

61-3-424. List of radio operators' special plates — distribution to public officials. The department shall, on or before July 1 of each year, furnish to the chief of the state highway patrol, to the director of civil defense, to the sheriff of each county in the state, to the chief of police of each incorporated city in the state, and to other public officials as the department considers necessary, an alphabetically arranged list of the names, addresses, and license plate numbers and letters of each person to whom a special license plate or a combined license plate has been issued, and it is the duty of the department, sheriffs, and chiefs of police to maintain and keep current the lists for public information and inquiry, particularly in relation to public emergencies.

History: En. Sec. 4, Ch. 2, L. 1957; R.C.M. 1947, 53-106.5; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 4, Ch. 489, L. 1995.

Cross-References

Duties of Sheriff, 7-32-2121.

Duties of Chief of Police, 7-32-4105.

Highway patrol — general duties of Department of Justice, 44-1-102.

Duties of Department of Justice — records, 61-3-101.

61-3-425. Special plates — how affixed to car — sale or transfer of auto — revocation or expiration of radio license. The lettered license plates, as herein provided, are in lieu of the regular license plates on the motor vehicle owned by the amateur radio licensee for the period of time that the amateur radio license is in force under the federal communications commission and the special license issued hereunder is in force, but no longer. If the official amateur radio license is revoked or expires for any reason, the license plate must be removed immediately by the owner of the motor vehicle, and it is the responsibility of the owner to then obtain regular license plates. If the motor vehicle is sold or otherwise transferred, the owner and holder of valid official amateur radio station and operator's licenses has the right to transfer the lettered plates to another motor vehicle owned by him upon such reasonable conditions as may be prescribed by the department. On the revocation or expiration of the amateur radio station and operator's licenses, the lettered license plates as issued must be returned and surrendered to the department.

History: En. Sec. 5, Ch. 2, L. 1957; amd. Sec. 4, Ch. 62, L. 1959; amd. Sec. 6, Ch. 127, L. 1969; R.C.M. 1947, 53-106.6; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 3, Ch. 635, L. 1989.

Cross-References

Transfer of license plates to another motor vehicle, 61-3-335.

61-3-426. Combined license plates. (1) An application for license plates for amateur radio operators may be combined with an application for the special license plates issued to veterans of the armed services who comply with the provisions in 61-3-332(10)(d), (10)(e), and (10)(f) or with an application for special license plates issued to a person with a disability who complies with the provisions in 61-3-332(10)(g). The applicant for the combined license plates is liable for the payment of all taxes and fees applicable to regular motor vehicle license plates and shall pay an additional fee of $5 for the original issuance as provided in 61-3-422.

(2) An application for license plates for amateur radio operators may be combined with an application for license plates for disabled veterans as provided in 61-3-332(10)(c). The fees for the registration of the combined license plates are the fees provided for in 61-3-332(10)(c) and in 61-3-422. The fees are in lieu of all other fees and taxes for that vehicle under this chapter.

(3) An application for license plates for amateur radio operators may be combined with an application for license plates for ex-prisoners of war as provided in 61-3-332(10)(d). The fees required under 61-3-321(1) and (5) may not be assessed upon one set of combination license plates issued to an ex-prisoner of war. An ex-prisoner of war receiving combination license plates under this section is liable for the fees required under 61-3-422.

(4) The combined license plates must be stamped with the official amateur radio call letters of the owner as assigned to the owner by the federal communications commission. The plates must also be stamped with the design or decal provided for in 61-3-332(10)(c), (10)(d), (10)(e), (10)(f), or (10)(g).

History: En. Sec. 1, Ch. 489, L. 1995; amd. Sec. 3, Ch. 79, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 79 inserted (3) concerning combined application for amateur radio operators and former prisoners of war; and made minor changes in style. Amendment effective January 1, 2000.

61-3-427 through 61-3-430 reserved.

61-3-431. Special mobile equipment — exemption from registration and payment of fees and charges — identification plate — publicly owned special mobile equipment. (1) A person, firm, partnership, or corporation who owns, leases, or rents special mobile equipment as defined in 61-1-104 and occasionally moves that equipment on, over, or across the highways of the state is not subject to registration of that equipment or required to pay the fees and charges provided for in 61-3-502, 61-4-301 through 61-4-308, or part 2 of chapter 10. Prior to movement on the highways, however, each piece of equipment shall display an equipment identification plate or a dealer's license plate attached to the equipment.

(2) Annual application for the identification plate shall be made to the county treasurer before any piece of equipment is moved on the highways. Application shall be made on a form furnished by the department of justice, together with the payment of a fee of $5. The equipment for which a special mobile equipment plate is sought is subject to the assessment of personal property taxes on the date application is made for the plate. The personal property taxes assessed against the special mobile equipment must be paid before the issuance of a special mobile equipment plate. The fees collected under this section belong to the county road fund.

(3) The identification plate expires on December 31 of each year. If the expired identification plate is displayed, an owner of special mobile equipment registered under the provisions of this section is entitled to operate the equipment between January 1 and February 15 following expiration without displaying the identification plate or receipt of the current year.

(4) Publicly owned special mobile equipment and implements of husbandry used exclusively by an owner in the conduct of his own farming operations are exempt from this section.

History: En. Sec. 7-207, Ch. 197, L. 1965; amd. Sec. 1, Ch. 232, L. 1967; amd. Sec. 1, Ch. 244, L. 1971; Sec. 32-3707, R.C.M. 1947; amd. and redes. 53-639.1 by Sec. 124, Ch. 316, L. 1974; amd. Sec. 3, Ch. 388, L. 1975; R.C.M. 1947, 53-639.1; amd. Sec. 1, Ch. 74, L. 1979; amd. Sec. 1, Ch. 39, L. 1981; amd. Sec. 14, Ch. 140, L. 1985.

Cross-References

When property is assessed, Title 15, ch. 8, part 2.

Implement of husbandry defined, 61-1-121.

61-3-432. Exemptions of vehicles not capable of operation on highways. Track-type tractors, other track mounted machinery and equipment, road rollers, and other similar equipment and machinery which cannot be self-propelled or towed upon the highways of this state and which must be transported by some type of hauling unit, are not subject to this chapter, chapter 4, part 1, chapter 6, chapter 10, part 2, or chapter 12, part 4.

History: En. Sec. 3, Ch. 150, L. 1963; Sec. 53-638.1, R.C.M. 1947; amd. and redes. 53-639.2 by Sec. 187, Ch. 316, L. 1974; R.C.M. 1947, 53-639.2; amd. Sec. 2, Ch. 39, L. 1981; amd. Sec. 16, Ch. 409, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 409 near end substituted "chapter 4, part 1" for "61-4-101 through 61-4-106"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

61-3-433. Issuance of identification plate and receipt — contents. The county treasurer shall issue to an applicant for an equipment identification plate a single metal plate with a distinguishing number and a receipt for the fee collected, which receipt shall contain the name and address of the applicant, the number of the plate issued, the serial number of the equipment, and a brief description of that equipment.

History: En. Sec. 2, Ch. 183, L. 1955; amd. Sec. 188, Ch. 316, L. 1974; R.C.M. 1947, 53-640.

Cross-References

Duties of County Treasurer, 7-6-2111.

61-3-434. Attaching receipt to equipment — inspection. The receipt shall be carried in a suitable container attached to the equipment or immediately available for inspection of any peace officer or highway patrol officer.

History: En. Sec. 3, Ch. 183, L. 1955; R.C.M. 1947, 53-641; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Law enforcement, Title 7, ch. 32.

Jurisdiction of highway patrol, Title 44, ch. 1, part 10.

61-3-435 through 61-3-440 reserved.

61-3-441. Renumbered 61-3-524 by Code Commissioner, 1979.

61-3-442. Renumbered 61-3-525 by Code Commissioner, 1979.

61-3-443. Repealed. Sec. 6, Ch. 159, L. 1985.

History: En. Sec. 1, Ch. 441, L. 1983.

61-3-444. Repealed. Sec. 16, Ch. 724, L. 1991.

History: En. Sec. 2, Ch. 441, L. 1983; amd. Sec. 1, Ch. 503, L. 1985.

61-3-445. Repealed. Sec. 16, Ch. 724, L. 1991.

History: En. Sec. 3, Ch. 441, L. 1983; amd. Sec. 1, Ch. 503, L. 1985.

61-3-446. Retention of special license plates. If during a registration year the holder of special license plates issued under 61-3-332(10) disposes of the vehicle to which the plates are affixed, the holder shall retain the plates and may affix them to another vehicle.

History: En. Sec. 4, Ch. 441, L. 1983; amd. Sec. 5, Ch. 159, L. 1985; amd. Sec. 2, Ch. 494, L. 1985; amd. Sec. 17, Ch. 724, L. 1991; amd. Sec. 246, Ch. 42, L. 1997; amd. Sec. 3, Ch. 344, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 344 substituted "61-3-332(10)" for "61-3-332(10)(b) through (10)(g)". Amendment effective January 1, 2000.

Effective Date — Applicability: Section 4, Ch. 344, L. 1999, provided: "[This act] is effective January 1, 2000, and applies to registrations of motor vehicles occurring after December 31, 1999."

Cross-References

Transfer of license plates to another motor vehicle, 61-3-335.

61-3-447. Repealed. Sec. 16, Ch. 724, L. 1991.

History: En. Sec. 1, Ch. 494, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.

61-3-448. Commemorative centennial license plates — continued use and replacement authorized. (1) A person who owns and displays commemorative centennial license plates on a motor vehicle on or before June 30, 1996, may continue to display the commemorative centennial plates on the vehicle after that date as long as the plates remain legible or as long as replacement plates are available from the department, whichever is later.

(2) The department shall authorize the continued display of commemorative centennial license plates after June 30, 1996, as provided for in subsection (1), and shall replace commemorative centennial license plates for persons who owned and displayed the plates on or before June 30, 1996, as long as replacement stock owned by the department on October 1, 1993, remains available and usable.

History: En. Sec. 1, Ch. 58, L. 1993; amd. Sec. 81, Ch. 51, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 51 in (1) near beginning after "license plates" deleted "issued under Title 2, chapter 89, part 3 [now terminated]". Amendment effective March 15, 1999.

61-3-449 and 61-3-450 reserved.

61-3-451. Repealed. Sec. 16, Ch. 724, L. 1991.

History: En. Sec. 1, Ch. 215, L. 1971; amd. Sec. 1, Ch. 33, L. 1975; amd. Sec. 1, Ch. 67, L. 1977; R.C.M. 1947, 53-106.8; amd. Sec. 7, Ch. 614, L. 1981; amd. Sec. 5, Ch. 614, L. 1983; amd. Sec. 1, Ch. 159, L. 1985; Sec. 10-2-301, MCA 1983; redes. 61-3-451 by Code Commissioner, 1985.

61-3-452. Disabled veterans' plates nontransferable. The special license plates for disabled veterans issued pursuant to 61-3-332(10)(c)(i)(A) or 61-3-426(2) are not transferable.

History: En. Sec. 2, Ch. 215, L. 1971; R.C.M. 1947, 53-106.9; amd. Sec. 2, Ch. 159, L. 1985; Sec. 10-2-302, MCA 1983; redes. 61-3-452 by Code Commissioner, 1985; amd. Sec. 17, Ch. 724, L. 1991; amd. Sec. 4, Ch. 209, L. 1993; amd. Sec. 5, Ch. 489, L. 1995.

61-3-453. Disabled veterans' plates limited to one automobile or truck — personalized plates. (1) A disabled veteran is not entitled to special license plates for disabled veterans under 61-3-332(10)(c)(i)(A) or 61-3-426(2) for more than one passenger automobile or one truck up to and including 1 ton GVW-rated capacity.

(2) Upon submitting the application provided for in 61-3-405 and payment of the $25 fee provided for in 61-3-406, a disabled veteran must receive personalized disabled veteran license plates.

History: En. Sec. 3, Ch. 215, L. 1971; amd. Sec. 1, Ch. 49, L. 1977; amd. Sec. 2, Ch. 67, L. 1977; R.C.M. 1947, 53-106.10; amd. Sec. 8, Ch. 614, L. 1981; amd. Sec. 3, Ch. 159, L. 1985; Sec. 10-2-303, MCA 1983; redes. 61-3-453 by Code Commissioner, 1985; amd. Sec. 3, Ch. 500, L. 1991; amd. Sec. 17, Ch. 724, L. 1991; amd. Sec. 5, Ch. 209, L. 1993; amd. Sec. 6, Ch. 489, L. 1995.

Cross-References

Personalized veterans' license plates, 61-3-407.

61-3-454. Special parking privilege. A vehicle lawfully displaying specially inscribed license plates issued under 61-3-332(10)(c)(i)(A) or 61-3-426(2) and conveying a 100% disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under 49-4-302.

History: En. Sec. 1, Ch. 71, L. 1985; amd. Sec. 17, Ch. 724, L. 1991; amd. Sec. 6, Ch. 209, L. 1993; amd. Sec. 7, Ch. 489, L. 1995; amd. Sec. 73, Ch. 472, L. 1997.

61-3-455. Violation a misdemeanor. A person who violates 61-3-452 or 61-3-453 or who knowingly and wrongfully attempts to secure license plates under 61-3-332 shall be guilty of a misdemeanor and punished by a fine of not less than $100 or imprisonment for not more than 30 days, or both.

History: En. Sec. 4, Ch. 215, L. 1971; R.C.M. 1947, 53-106.11; Sec. 10-2-304, MCA 1983; redes. 61-3-455 by Code Commissioner, 1985; amd. Secs. 4, 5, Ch. 500, L. 1991; amd. Sec. 17, Ch. 724, L. 1991.

61-3-456. Registration of motor vehicle owned and operated by Montana resident on active military duty stationed outside Montana. (1) As an incentive for military service, an owner of a motor vehicle who is a Montana resident who entered active military duty from Montana and who is stationed outside Montana may file with the department an application for the registration of the motor vehicle. The application must be sworn to before an officer authorized to administer oaths. The application must state:

(a) the name and address of the owner;

(b) the make, the gross weight, the year and number of the model, and the manufacturer's identification number and serial number of the motor vehicle; and

(c) that the vehicle is owned and operated by a Montana resident who meets the qualifications of subsection (1) and is on active military duty and stationed outside Montana.

(2) The registration fee for a motor vehicle registered under subsection (1) is as provided in 61-3-311 and 61-3-321.

(3) A vehicle registered under this section is not subject to:

(a) the taxes described in 61-3-303(2)(b);

(b) assessment under 15-8-202 or 61-3-503 or the fee in lieu of tax under 61-3-529; or

(c) any of the fees provided in part 5 of this chapter.

History: En. Sec. 1, Ch. 257, L. 1995; amd. Sec. 21, Ch. 496, L. 1997; amd. Sec. 1, Ch. 509, L. 1997.

61-3-457. Ex-prisoner of war license plates transferable to spouse — conditions. Upon the death of an ex-prisoner of war and providing that the surviving spouse does not remarry, the spouse of an ex-prisoner of war may retain and renew the one set of special license plates issued under 61-3-332(10)(d) and is not liable for light vehicle taxes under 61-3-504, for the fees required under 61-3-321(1) and (5), or for the special license plate fees required under 61-3-332.

History: En. Sec. 5, Ch. 79, L. 1999.

Compiler's Comments

Effective Date: This section is effective January 1, 2000.

61-3-458 through 61-3-460 reserved.

61-3-461. Short title. Sections 61-3-461 through 61-3-467 may be cited as the "Montana Collegiate License Plates Act".

History: En. Sec. 1, Ch. 661, L. 1989.

61-3-462. Definitions. As used in 61-3-461 through 61-3-467, the following definitions apply:

(1) "Collegiate license plates" means license plates bearing the colors, numerals, letters, and insignia provided in 61-3-463 and issued as provided in 61-3-464 through 61-3-466.

(2) "Institution" means:

(a) a unit of the Montana university system as designated in 20-25-201;

(b) a community college district as defined in 20-15-101; or

(c) a college or university located in Montana and accredited by a national or regional accrediting association for institutions of higher learning to grant baccalaureate degrees.

History: En. Sec. 2, Ch. 661, L. 1989.

61-3-463. Collegiate license plates. (1) Subject to the provisions of 61-3-332(3) and the requirement that collegiate license plates must have a white reflectorized background, the department shall design, cause to be manufactured, and issue collegiate license plates as provided in 61-3-464 through 61-3-466.

(2) After consultation with each institution, the department shall prescribe the color and insignia to be displayed on the collegiate license plates for each institution.

(3) In addition to each institution's distinctive color and insignia provided in subsection (2), each collegiate license plate must:

(a) be imprinted consecutively with distinctive numerals from 1 through 99999, capital letters A through Z, or a combination of numerals and letters; and

(b) bear a nonremovable sticker denoting the correct county designation under 61-3-332.

(4) The department shall determine the minimum and maximum number of characters, including both numerals and letters, on the collegiate license plates.

(5) An issue of collegiate license plates may not be ordered or manufactured for any individual institution unless at least 400 sets of plates are ordered and prepaid.

History: En. Sec. 3, Ch. 661, L. 1989; amd. Sec. 247, Ch. 42, L. 1997.

61-3-464. Application for collegiate license plates. An applicant for collegiate license plates or renewal of collegiate license plates pursuant to 61-3-465 shall apply in the form and by the date the department requires.

History: En. Sec. 4, Ch. 661, L. 1989.

61-3-465. Issuance — application — additional fee — disposition. (1) The department shall issue or renew collegiate license plates upon receipt of an application that shows:

(a) compliance with 61-3-303, 61-3-311, and 61-3-312; and

(b) payment to the county treasurer of:

(i) an initial application and manufacturing fee of $2.50, when required; and

(ii) an annual scholarship donation of $20 for the benefit of the institution named in the application.

(2) Once each month the county treasurer shall transfer to the state treasurer the total of the amounts collected for:

(a) the initial application and manufacturing fee for deposit in the Montana state prison industries account in the proprietary fund for appropriation by the legislature to pay the cost of manufacturing collegiate license plates; and

(b) scholarship donations provided for in subsection (1)(b)(ii), along with a schedule showing the number of collegiate license plates issued and the total donations received for the benefit of each institution.

(3) Once each month the state treasurer shall distribute to the student academic scholarship fund or foundation of each institution an amount equal to the total donations credited to that institution and transferred to the state treasurer by the county treasurers during the preceding month.

History: En. Sec. 5, Ch. 661, L. 1989; amd. Sec. 10, Ch. 724, L. 1991.

61-3-466. Personalized collegiate license plates. (1) Subject to the provisions of 61-3-405 and 61-3-406, an application for collegiate license plates may be combined with an application for personalized plates.

(2) An application for personalized collegiate license plates must be made on a form supplied by the department.

(3) Personalized collegiate license plates must bear the distinctive color and insignia as provided in 61-3-463.

History: En. Sec. 6, Ch. 661, L. 1989.

61-3-467. Authorization to receive and transmit donations. As provided in 61-3-465 and notwithstanding any other provisions of Title 7, Title 17, or this title:

(1) the county treasurer shall receive the annual scholarship donations provided for in 61-3-465 and once each month transmit those donations to the state treasurer; and

(2) the state treasurer shall accept the annual scholarship donations and once each month distribute the accumulated proceeds to the beneficiary institutions specified by and according to the totals contained in the county treasurers' reports.

History: En. Sec. 7, Ch. 661, L. 1989.

61-3-468. Collegiate license plates — continued use with institution's former name authorized — replacement. (1) A person who owns and displays on the person's vehicle, collegiate license plates that bear the name of an institution that has been renamed by its governing body or as part of the Montana university system reorganization may continue to display on the vehicle the license plate bearing the former name of the institution as long as the plates remain legible or as long as replacement plates are available from the department, whichever is later.

(2) The department may issue or replace a collegiate license plate bearing the former name of an institution, as defined in 61-3-462, as long as replacement stock owned by the department of corrections is available.

History: En. Sec. 1, Ch. 462, L. 1997.

Part 5

Taxes, Fees, and Fees in Lieu of Taxes

Part Cross-References

Taxation, Title 15.

Custom combiner's fee, 61-10-130.

61-3-501. When vehicle taxes and fees are due. (1) Motor vehicle taxes, fees in lieu of tax, new car taxes, and fees must be paid on the date of registration or reregistration of the vehicle.

(2) (a) If the anniversary date for reregistration of a vehicle passes while the vehicle is owned and held for sale by a licensed new or used car dealer, motor vehicle taxes or fees in lieu of tax abate on the vehicle properly reported with the county treasurer until the vehicle is the subject of a retail sale. After the sale, the purchaser shall pay the pro rata balance of the taxes or fees in lieu of tax due and owing on the vehicle.

(b) For the purposes of this subsection (2), a retail sale does not include a transfer between any of the following:

(i) a licensed new motor vehicle or used motor vehicle dealer;

(ii) another licensed new motor vehicle or used motor vehicle dealer;

(iii) a licensed wholesaler; or

(iv) a licensed auto auction.

(3) In the event that a vehicle's registration period is changed under 61-3-315, all taxes or fees in lieu of tax and other fees due must be prorated and paid from the last day of the old period until the first day of the new period in which the vehicle is registered. The taxes or fees in lieu of tax and other fees must be paid from the first day of the new period for a minimum period of 1 year. When the change is to a later registration period, taxes and fees must be prorated and paid based on the same tax year as the original registration period. Thereafter, during the appropriate anniversary registration period, each vehicle must again be registered or reregistered and all taxes and fees must be paid for a 12-month period.

History: (1), (2)En. 53-159 by Sec. 6, Ch. 74, L. 1975; Sec. 53-159, R.C.M. 1947; (3)En. 53-161 by Sec. 8, Ch. 74, L. 1975; amd. Sec. 2, Ch. 183, L. 1977; Sec. 53-161, R.C.M. 1947; R.C.M. 1947, 53-159, 53-161; amd. Sec. 12, Ch. 712, L. 1979; amd. Sec. 29, Ch. 614, L. 1981; amd. Sec. 22, Ch. 516, L. 1985; amd. Sec. 24, Ch. 611, L. 1987; amd. Sec. 22, Ch. 496, L. 1997; amd. Sec. 17, Ch. 409, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 409 in (2)(a) substituted "is the subject of a retail sale" for "is sold"; inserted (2)(b) providing exclusions from definition of retail sale; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

Cross-References

Motor vehicle assessment, 15-8-202.

Motorcycle defined, 61-1-105.

Quadricycle defined, 61-1-133.

Registration period, 61-3-314.

Motor vehicle dealers, Title 61, ch. 4, part 1.

61-3-502. Sales tax on new motor vehicles — exemptions. (1) In consideration of the right to use the highways of the state, there is imposed a tax upon all sales of new motor vehicles, excluding trailers, semitrailers, and housetrailers, for which a license is sought and an original application for title is made. The tax must be paid by the purchaser when the purchaser applies for an original Montana license through the county treasurer. For purposes of this section, "new motor vehicle" means a new motor vehicle for which original registration is sought or a motor vehicle previously furnished without charge by a dealer to a school district for use in a state-approved traffic education program, whether or not the certificate of ownership is held by the dealer or the school district, and for which original registration is sought.

(2) Except as provided in subsections (4) and (5), the sales tax is:

(a) 1 ½% of the f.o.b. factory list price or f.o.b. port-of-entry list price, during the first quarter of the year or for a registration period other than a calendar year or calendar quarter;

(b) 1 ⅛% of the list price during the second quarter of the year;

(c) 3/4 of 1% during the third quarter of the year;

(d) 3/8 of 1% during the fourth quarter of the year.

(3) If the manufacturer or importer fails to furnish the f.o.b. factory list price or f.o.b. port-of-entry list price, the department may use published price lists.

(4) The new car sales tax on vehicles subject to the provisions of 61-3-313 through 61-3-316 is 1 ½% of the f.o.b. factory list price or f.o.b. port-of-entry list price regardless of the month in which the new vehicle is purchased.

(5) The sales tax on new motor vehicles registered as part of a fleet under 61-3-318 is 3/4 of 1% of the f.o.b. factory list price or f.o.b. port-of-entry list price.

(6) The proceeds from this tax must be remitted to the state treasurer every 30 days. The state treasurer shall deposit $1 of the tax on each new motor vehicle in a special revenue account to be used by the department of commerce in carrying out its duties under Title 61, chapter 4, part 5, with the balance of the proceeds to be credited to the highway nonrestricted account of the state special revenue fund. The county treasurer shall retain 5% of the taxes collected to pay for the cost of administration.

(7) The new vehicle is not subject to any other assessment, fee in lieu of tax, or tax during the calendar year in which the original application for title is made.

(8) A new motor vehicle may not be registered or licensed unless the application for registration is accompanied by a statement of origin that is furnished by the dealer selling the vehicle and that shows that the vehicle has not previously been registered or owned, except as otherwise provided in this section, by any person, firm, corporation, or association other than a new motor

vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.

(9) (a) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from the limits are exempt from the provisions of subsection (1).

(b) Motor vehicles brought or driven into Montana by nonresident, migratory, bona fide agricultural workers who are temporarily employed in agricultural work in this state, when those motor vehicles are used exclusively for transportation of agricultural workers, are also exempt from the provisions of subsection (1).

(c) Vehicles lawfully displaying a licensed dealer's plate as provided in 61-4-102 are exempt from the provisions of subsection (1):

(i) when moving to or from a dealer's place of business when unloaded or loaded with dealer's property only; and

(ii) in the case of vehicles having a gross loaded weight of less than 24,000 pounds, while being demonstrated in the course of the dealer's business.

(d) Motor vehicles owned or controlled by a special district, as defined in 18-8-202, are exempt from subsection (1).

(e) A vehicle registered under 61-3-456 is exempt from the provisions of subsection (1).

History: (1) thru (5)En. Sec. 6-215, Ch. 197, L. 1965; amd. Sec. 5, Ch. 290, L. 1967; amd. Sec. 119, Ch. 316, L. 1974; amd. Sec. 15, Ch. 74, L. 1975; Sec. 32-3315, R.C.M. 1947; (6)En. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R.C.M. 1921; amd. Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch. 158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953; amd. Sec. 1, Ch. 256, L. 1955; amd. Sec. 1, Ch. 223, L. 1957; amd. Sec. 1, Ch. 245, L. 1963; amd. Sec. 1, Ch. 290, L. 1967; amd. Sec. 9, Ch. 296, L. 1967; amd. Sec. 3, Ch. 214, L. 1971; amd. Sec. 12, Ch. 74, L. 1975; amd. Sec. 1, Ch. 55, L. 1977; amd. Sec. 1, Ch. 521, L. 1977; amd. Sec. 43, Ch. 566, L. 1977; Sec. 53-114, R.C.M. 1947; (7)En. Sec. 12, Ch. 219, L. 1951; amd. Sec. 1, Ch. 262, L. 1967; amd. Sec. 1, Ch. 46, L. 1973; Sec. 53-626, R.C.M. 1947; amd. and redes. 32-3319 by Sec. 183, Ch. 316, L. 1974; Sec. 32-3319, R.C.M. 1947; R.C.M. 1947, 32-3315(part), 32-3319(part), 53-114(6); amd. Sec. 38, Ch. 421, L. 1979; amd. Sec. 13, Ch. 712, L. 1979; amd. Sec. 30, Ch. 614, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 657, L. 1983; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 585, L. 1987; amd. Sec. 25, Ch. 611, L. 1987; amd. Sec. 3, Ch. 517, L. 1989; amd. Sec. 32, Ch. 15, Sp. L. July 1992; amd. Sec. 9, Ch. 575, L. 1993; amd. Sec. 3, Ch. 81, L. 1995; amd. Sec. 4, Ch. 257, L. 1995; amd. Sec. 54, Ch. 509, L. 1995; amd. Sec. 248, Ch. 42, L. 1997; amd. Sec. 1, Ch. 199, L. 1997; amd. Sec. 18, Ch. 409, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 409 in (9)(c) substituted "61-4-102" for "61-4-103"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

Cross-References

Duties of County Treasurer, 7-6-2111.

Motor vehicle assessment, 15-8-202.

Fund structure, 17-2-102.

Schools — traffic education, Title 20, ch. 7, part 5.

Fleet registration period, 61-3-318.

Special mobile equipment — exemption from registration and fees, 61-3-431.

Penalty for nonpayment of sales tax, 61-3-605.

Foreign vehicles used for transportation in connection with employment, 61-3-707.

Motor vehicle dealers, Title 61, ch. 4, part 1.

Licensing of new motor vehicle manufacturers, distributors, and importers, Title 61, ch. 4, part 2.

Size and weight — enforcement, 61-10-231.

Offenses for which arrest authorized, 61-12-206.

Carriers of passengers, Title 69, ch. 11, part 2.

61-3-503. Assessment. (1) Except as provided in 61-3-520 and subsection (4) of this section, the following apply to the taxation of motor vehicles:

(a) Vehicles subject to the provisions of 61-3-313 through 61-3-316 must be assessed as of the first day of the registration period, using the depreciated value of the manufacturer's suggested retail price as determined in subsection (2).

(b) A lien for taxes and fees due on the vehicle occurs on the anniversary date of the registration and continues until the fees and taxes have been paid. If the depreciated value is less than $500, the department shall value the vehicle at $500.

(2) (a) Except as provided in subsections (2)(c) and (2)(d), the depreciated value for the taxation of light vehicles is computed by multiplying the manufacturer's suggested retail price by a percentage multiplier based on the type and age of the vehicle determined from the following table:

Age of Vehicle	Type of Vehicle			
(in years)	Automobile	Truck	Van	Sport Utility
-1	100%	100%	100%	100%
0	90	96	93	98
1	80	91	86	94
2	69	86	78	90
3	58	80	69	84
4	49	73	60	76
5	41	66	52	67
6	33	57	45	57
7	26	49	38	48
8	21	43	32	39
9	17	37	27	33
10	14	31	22	29
11	12	26	18	25
12	10	22	15	22
13	09	18	13	21
14	09	15	11	19
15	09	13	09	17
16	09	12	09	15

(b) The age for the light vehicle is determined by subtracting the manufacturer's model year of the vehicle from the calendar year for which the tax is due.

(c) If the value of the vehicle determined under subsection (2)(a) is $500 or less, the value of the vehicle is $500 and the value must remain at that amount as long as the vehicle is registered.

(d) The depreciated value of a light vehicle that is 17 years old or older is computed by depreciating the value obtained for the vehicle at 16 years old as determined under subsection (2)(a) by 10% a year until a minimum value of $500 is attained. The value must remain at that amount as long as the vehicle is registered.

(3) (a) For the purposes of this section, "manufacturer's suggested retail price" means the price suggested by the manufacturer for each given type, style, or model of light vehicle produced and first made available for retail sale by the manufacturer.

(b) The manufacturer's suggested retail price is based on standard equipment of a vehicle and does not contain price additions or deductions for optional accessories.

(c) When a manufacturer's suggested retail price is unavailable for a motor vehicle, the department shall determine an alternative valuation for the vehicle.

(4) The provisions of subsections (1) through (3) do not apply to buses, trucks having a manufacturer's rated capacity of more than 1 ton, truck tractors, motorcycles, motor homes, quadricycles, travel trailers, campers, mobile homes or manufactured homes as those terms are defined in 15-1-101(1).

History: Ap. p. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R.C.M. 1921; amd. Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch. 158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953; amd. Sec. 1, Ch. 256, L. 1955; amd. Sec. 1, Ch. 223, L. 1957; amd. Sec. 1, Ch. 245, L. 1963; amd. Sec. 1, Ch. 290, L. 1967; amd. Sec. 9, Ch. 296, L. 1967; amd. Sec. 3, Ch. 214, L. 1971; amd. Sec. 12, Ch. 74, L. 1975; amd. Sec. 1, Ch. 55, L. 1977; amd. Sec. 1, Ch. 521, L. 1977; amd. Sec. 43, Ch. 566, L. 1977; Sec. 53-114, R.C.M. 1947; Ap. p. Sec. 9, Ch. 74, L. 1975; Sec. 53-162, R.C.M. 1947; R.C.M. 1947, 53-114(2), (5), 53-162; amd. Sec. 39, Ch. 421, L. 1979; amd. Sec. 14, Ch. 712, L. 1979; amd. Sec. 2, Ch. 262, L. 1981; amd. Sec. 31, Ch. 614, L. 1981; amd. Sec. 23, Ch. 516, L. 1985; amd. Sec. 26, Ch. 611, L. 1987; amd. Sec. 1, Ch. 349, L. 1989; amd. Sec. 5, Ch. 525, L. 1989; amd. Sec. 1, Ch. 8, Sp. L. June 1989; amd. Sec. 7, Ch. 604, L. 1991; amd. Sec. 133, Ch. 27, Sp. L. November 1993; amd. Sec. 9, Ch. 580, L. 1995; amd. Sec. 23, Ch. 200, L. 1997; amd. Sec. 23, Ch. 496, L. 1997.

Cross-References

Duties of County Treasurer, 7-6-2111.

County Assessor as agent of Department of Revenue, 15-8-102.

Motor vehicle assessment, 15-8-202.

Liens — general provisions, Title 71, ch. 3, part 1.

61-3-504. Computation of tax. (1) The amount of taxes on a light vehicle, except as provided in subsection (2), is the percentage determined under subsection (3) of the value determined under 61-3-503.

(2) The following are exempt from taxation under subsection (1):

(a) a vehicle registered under 61-3-456;

(b) a vehicle owned by a disabled veteran qualifying for one set of special license plates under 61-3-332(10)(c) or 61-3-426; and

(c) a vehicle owned by an ex-prisoner of war under 61-3-332(10)(d) or a surviving spouse of an ex-prisoner of war under 61-3-457.

(3) The amount of tax on fleet vehicles subject to the provisions of 61-3-318 is one-half of the percentage determined under subsection (4) of the value determined under 61-3-503.

(4) For tax years beginning after December 31, 2000, the taxable percentage for the computation of taxes under this section is determined prior to the start of a tax year by multiplying the statewide total taxable value of motor vehicles subject to taxation under this section for the first half of the prior calendar year by the prior year tax rate and then dividing the product by the statewide total taxable value of motor vehicles subject to taxation under

this section for the first half of the current calendar year. For the tax year beginning after December 31, 1999, the rate is 1.4%. To determine the rate for tax year 2001, the tax rate for the first half of calendar year 1999 is considered to be 1.4%.

History: En. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R.C.M. 1921; amd. Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch. 158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953; amd. Sec. 1, Ch. 256, L. 1955; amd. Sec. 1, Ch. 223, L. 1957; amd. Sec. 1, Ch. 245, L. 1963; amd. Sec. 1, Ch. 290, L. 1967; amd. Sec. 9, Ch. 296, L. 1967; amd. Sec. 3, Ch. 214, L. 1971; amd. Sec. 12, Ch. 74, L. 1975; amd. Sec. 1, Ch. 55, L. 1977; amd. Sec. 1, Ch. 521, L. 1977; amd. Sec. 43, Ch. 566, L. 1977; R.C.M. 1947, 53-114(4); amd. Sec. 15, Ch. 712, L. 1979; amd. Sec. 32, Ch. 614, L. 1981; amd. Sec. 24, Ch. 516, L. 1985; amd. Sec. 27, Ch. 611, L. 1987; amd. Sec. 4, Ch. 517, L. 1989; amd. Sec. 3, Ch. 612, L. 1989; amd. Sec. 17, Ch. 724, L. 1991; amd. Sec. 7, Ch. 209, L. 1993; amd. Sec. 5, Ch. 257, L. 1995; amd. Sec. 8, Ch. 489, L. 1995; amd. Sec. 10, Ch. 580, L. 1995; amd. Sec. 24, Ch. 496, L. 1997; amd. Sec. 4, Ch. 79, L. 1999; amd. Sec. 2, Ch. 180, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 79 in (1) substituted reference to subsection (2) for "for vehicles registered under 61-3-456 or owned by disabled veterans qualifying for special license plates under 61-3-332(10)(c) or 61-3-426(2)"; inserted (2) concerning exempt vehicles; and made minor changes in style. Amendment effective January 1, 2000.

Chapter 180 in (1) near end after "61-3-426(2)" substituted "is the percentage determined under subsection (4)" for "is 2%"; in (3) after "61-3-318" substituted "is one-half of the percentage determined under subsection (3)" for "is 1%"; and inserted (4) providing for the computation of taxable percentage for tax years beginning after December 31, 1999 and 2000, and for the tax rate for 2001. Amendment effective January 1, 2000.

Applicability: Section 6, Ch. 180, L. 1999, provided: "[This act] applies to registration periods beginning after December 31, 1999, and to fleet registrations after December 31, 1999."

Cross-References

Duties of County Treasurer related to taxation, 7-6-2503.

Fleet registration period, 61-3-318.

61-3-505. Repealed. Sec. 16, Ch. 724, L. 1991.

History: En. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R.C.M. 1921; amd. Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch. 158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953; amd. Sec. 1, Ch. 256, L. 1955; amd. Sec. 1, Ch. 223, L. 1957; amd. Sec. 1, Ch. 245, L. 1963; amd. Sec. 1, Ch. 290, L. 1967; amd. Sec. 9, Ch. 296, L. 1967; amd. Sec. 3, Ch. 214, L. 1971; amd. Sec. 12, Ch. 74, L. 1975; amd. Sec. 1, Ch. 55, L. 1977; amd. Sec. 1, Ch. 521, L. 1977; amd. Sec. 43, Ch. 566, L. 1977; R.C.M. 1947, 53-114(7), (8); amd. Sec. 40, Ch. 421, L. 1979.

61-3-506. Rules. (1) The department of transportation shall adopt rules for the payment of new car taxes under the provisions of 61-3-313 through 61-3-316, 61-3-501, and 61-3-520.

(2) The department of justice may adopt rules:

(a) for the assessment and collection of taxes and fees on light vehicles, including the proration of taxes under 61-3-520;

(b) for the imposition and collection of fees in lieu of tax, including the proration of fees in lieu of tax under 61-3-520, on buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including criteria for determining the vehicle's age and manufacturer's rated capacity; and

(c) for the administration of fees for trailers, pole trailers, and semitrailers, including criteria for determining a trailer's age and weight.

History: En. 53-160 by Sec. 7, Ch. 74, L. 1975; R.C.M. 1947, 53-160; amd. Sec. 2, Ch. 657, L. 1983; amd. Sec. 28, Ch. 611, L. 1987; amd. Sec. 6, Ch. 525, L. 1989; amd. Sec. 3,

Ch. 512, L. 1991; amd. Sec. 5, Ch. 121, L. 1997; amd. Sec. 25, Ch. 496, L. 1997; amd. Sec. 82, Ch. 51, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 51 in (2)(c) at beginning deleted "The department of justice may adopt rules". Amendment effective March 15, 1999.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

61-3-507. Exemption. A vehicle that is exempt from taxation under 15-6-215 or subject to the provisions of 61-3-520 is exempt from all other taxes and fees generally imposed on a vehicle by this part.

History: En. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R.C.M. 1921; amd. Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch. 158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953; amd. Sec. 1, Ch. 256, L. 1955; amd. Sec. 1, Ch. 223, L. 1957; amd. Sec. 1, Ch. 245, L. 1963; amd. Sec. 1, Ch. 290, L. 1967; amd. Sec. 9, Ch. 296, L. 1967; amd. Sec. 3, Ch. 214, L. 1971; amd. Sec. 12, Ch. 74, L. 1975; amd. Sec. 1, Ch. 55, L. 1977; amd. Sec. 1, Ch. 521, L. 1977; amd. Sec. 43, Ch. 566, L. 1977; R.C.M. 1947, 53-114(9); amd. Sec. 33, Ch. 614, L. 1981; amd. Sec. 7, Ch. 525, L. 1989; amd. Sec. 17, Ch. 724, L. 1991; amd. Sec. 26, Ch. 496, L. 1997.

61-3-508. Junk vehicle disposal fee. A special junk vehicle disposal fee must be assessed on each new application for a motor vehicle title and on each transfer of a motor vehicle title in the amount of $1.50 on passenger cars and trucks under 8,001 pounds GVW. An additional special junk vehicle disposal fee must be assessed in the amount of 50 cents on each passenger car and truck under 8,001 pounds GVW registered for licensing. The fees must be collected by the county treasurer. However, the following are exempt from payment of the fees:

(1) vehicles leased or owned by the state or by a county or municipality;

(2) vehicles used for transportation by nonresident, migratory workers temporarily employed in agricultural work in this state;

(3) vehicles displaying dealer's or wholesaler's plates while owned by a dealer or wholesaler; and

(4) housetrailers or equipment that is not self-propelled or that requires towing upon a highway of this state.

History: En. Sec. 7, Ch. 410, L. 1973; amd. Sec. 1, Ch. 52, L. 1975; amd. Sec. 2, Ch. 520, L. 1975; amd. Sec. 18, Ch. 140, L. 1977; amd. Sec. 5, Ch. 252, L. 1977; R.C.M. 1947, 69-6807(2); amd. Sec. 41, Ch. 421, L. 1979; amd. Sec. 12, Ch. 383, L. 1991; amd. Sec. 19, Ch. 409, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 409 in (3) before "plates" deleted "license" and after "plates" deleted "as provided in 61-4-103"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

Cross-References

Duties of County Treasurer, 7-6-2111.

Foreign vehicles used for transportation in connection with employment, 61-3-707.

Reuse and restoration of junk vehicle rules, 75-10-503.

Disposal of junk vehicles — fees and records, 75-10-513.

61-3-509. Disposition of taxes. (1) Except as provided in subsection (2), the county treasurer shall, after deducting the district court fee, credit all taxes on motor vehicles and fees in lieu of tax on motorcycles, quadricycles, motor homes, travel trailers, campers, trailers, pole trailers, semitrailers, buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors collected under 61-3-504, 61-3-521, 61-3-527, 61-3-529, and 61-3-537, to a motor vehicle suspense fund. At some time between March 1 and March 10 of each year and every 60 days after that date, the county treasurer shall distribute the money in the motor vehicle suspense fund. Except for taxes collected under 61-3-504, the county treasurer shall distribute the money in the fund in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed. For money in the fund collected under 61-3-504, the county treasurer shall disregard the statewide mills levied for the university system and the mills levied for state equalization aid under 20-9-360 in determining distribution proportions of the money and may not distribute money from 61-3-504 to the state for either levy. If the distribution of money collected under 61-3-504 to a school district general fund results in a lower revenue than the district received in fiscal year 1999 and the district has, for all years after fiscal year 1999, received less revenue than in fiscal year 1999, then the district general fund is entitled to state reimbursement for the amount of the difference between the fiscal year 1999 revenue and the prior school fiscal year revenue under 61-3-504. Prior to January 31, the office of public instruction shall distribute to each school district an amount equal to the state reimbursement for the prior school year.

(2) The county treasurer shall deduct as a district court fee 10% of the amount of the tax collected on light vehicles under 61-3-504(1). The county treasurer shall credit the fee for district courts to a separate suspense account and shall forward the amount in the account to the state treasurer at the time that the county treasurer distributes money from the motor vehicle suspense fund. The state treasurer shall credit amounts received under this subsection to the state special revenue fund to be used for purposes of state funding of district court expenses as provided in 3-5-901.

History: En. Subd. 4, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.3, R.C.M. 1935; amd. Sec. 4, Ch. 72, L. 1937; amd. Sec. 1, Ch. 154, L. 1943; amd. Sec. 1, Ch. 200, L. 1945; amd. Sec. 29, Ch. 121, L. 1965; R.C.M. 1947, 53-117; amd. Sec. 16, Ch. 712, L. 1979; amd. Sec. 34, Ch. 614, L. 1981; amd. Sec. 25, Ch. 516, L. 1985; amd. Sec. 1, Ch. 685, L. 1985; amd. Sec. 1, Ch. 702, L. 1985; amd. Sec. 2, Ch. 1, Sp. L. 1985; amd. Sec. 3, Ch. 416, L. 1987; amd. Sec. 29, Ch. 611, L. 1987; amd. Sec. 46, Ch. 16, L. 1991; amd. Sec. 5, Ch. 330, L. 1993; amd. Sec. 11, Ch. 580, L. 1995; amd. Sec. 6, Ch. 121, L. 1997; amd. Sec. 51, Ch. 422, L. 1997; amd. Sec. 27, Ch. 496, L. 1997; amd. Sec. 170(2), Ch. 584, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 584 at beginning of third sentence in (1) inserted exception clause and language requiring county treasurer to distribute money in fund and inserted fourth, fifth, and sixth sentences requiring county treasurer to disregard statewide mills for university system and state equalization aid in determining distribution and prohibiting distribution for either levy, providing that district general fund is entitled to state reimbursement under certain circumstances, and requiring office of public instruction to distribute amount equal to state reimbursement for prior school year; and in first sentence in (2) increased district court fee from 7% to 10% and after "vehicles" inserted "under 61-3-504(1)". Amendment effective May 10, 1999.

The amendments to this section made by Ch. 180, L. 1999, were rendered void by sec. 170(2), Ch. 584, L. 1999, a coordination section.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Cross-References

Duties of County Treasurer related to taxation, 7-6-2503.

Disposition of tax proceeds, Title 15, ch. 1, part 5.

Snowmobiles — registration and decals — use of certain fees, 23-2-616.

61-3-510. Weed control fee. (1) A special weed control fee of $1.50 must be assessed on the annual registration or reregistration of each motor vehicle subject to registration. The fee must be collected by the county treasurer.

(2) For purposes of this section, motor vehicle includes:

(a) a motor vehicle as defined in 61-1-102;

(b) a motorcycle as defined in 61-1-105;

(c) a motor-driven cycle as defined in 61-1-106; and

(d) a quadricycle as defined in 61-1-133.

(3) The following vehicles are exempt from the fee:

(a) vehicles owned or controlled by the United States or a state, county, city, or special district, as defined in 18-8-202;

(b) vehicles exempt from payment of registration fees by 61-3-321(8); and

(c) vehicles or equipment that is not self-propelled or that requires towing when moved upon a highway of this state.

History: En. Sec. 1, Ch. 639, L. 1987; amd. Sec. 2, Ch. 433, L. 1989; amd. Sec. 11, Ch. 724, L. 1991; amd. Sec. 4, Ch. 81, L. 1995.

61-3-511. County motor vehicle computer fee. (1) A county motor vehicle computer fee of $1 must be assessed on the annual registration or reregistration for each of the following:

(a) motor vehicles subject to registration or reregistration under Title 61, chapter 3;

(b) boats subject to registration or reregistration under Title 23, chapter 2, part 5;

(c) snowmobiles subject to registration or reregistration under Title 23, chapter 2, part 6; and

(d) off-highway vehicles subject to registration or reregistration under Title 23, chapter 2, part 8.

(2) The fee must be collected by the county treasurer and forwarded to the state treasurer for deposit in the state general fund.

History: En. Sec. 15, Ch. 604, L. 1991.

61-3-512. State parks recreational vehicle fee — collection and expenditure — exception. (1) There is a fee of $3.50 imposed on the registration or reregistration of each recreational vehicle as defined in 61-1-132, camper as defined in 61-1-129, motor home as defined in 61-1-130, and travel trailer as defined in 61-1-131. The fee is in addition to annual registration fees and is due and payable at the time of registration.

(2) The fee must be collected by the county treasurer and submitted to the department of revenue to be expended as provided in this section. The department of revenue shall place the fee proceeds in the state treasury in the special revenue fund established in 23-1-105 to the credit of the department of fish, wildlife, and parks. The funds may be used to provide recreational vehicle services and facilities in state parks.

(3) The fee imposed by subsection (1) need not be paid by a dealer for vehicles that constitute the inventory of the dealership.

History: En. Sec. 1, Ch. 718, L. 1991.

61-3-513 through 61-3-517 reserved.

61-3-518. Application for camper certificate of ownership. A person applying for a certificate of ownership of a camper shall furnish proof of ownership in the form of a notarized bill of sale or a conditional sales contract.

History: **En. Sec. 6, Ch. 715, L. 1991.**

61-3-519. Grace period for registration and payment of fee — penalty for failure to pay fee. (1) Unless the fee in lieu of tax provided in 61-3-523 for the year has been paid, the purchaser of a new camper has 20 days from the date of purchase to apply for the camper decal, as provided in 61-3-524, and to pay the fee, as if the fee on the camper were being imposed for the first time in that registration year. The purchaser may operate or transport a camper on the highways of Montana without a decal during the 20-day period if the operator of the camper or of the vehicle upon which the camper is transported has in the operator's possession a 20-day certificate issued by a dealer, if the camper was purchased from a dealer, or a vehicle purchase certificate issued pursuant to 61-3-317 or other evidence of purchase of the camper.

(2) A purchaser who fails to make application and pay the fee within the time provided in subsection (1) is subject to a penalty of $10, which must be collected by the county treasurer when the tax is paid and must be in addition to the fees otherwise provided by law.

History: **En. Sec. 7, Ch. 715, L. 1991; amd. Sec. 7, Ch. 121, L. 1997.**

61-3-520. Taxes and fees on vehicles used exclusively in filming motion pictures or television commercials. (1) A vehicle used exclusively in the filming of motion pictures or television commercials that has been in the state for a period exceeding 180 consecutive days in a calendar year is subject to assessment or a fee in lieu of tax as if the vehicle were not used exclusively for filming motion pictures or television commercials, but the assessment or fee in lieu of tax must be prorated as provided in subsection (2).

(2) The taxes assessed or the fees in lieu of tax imposed under subsection (1) must be prorated by dividing the number of days in excess of 180 consecutive days in the calendar year by 365.

(3) (a) Taxes on a vehicle imposed pursuant to this section must be collected as provided in Title 15, chapter 16, part 1, for the collection of personal property taxes generally.

(b) Fees on a vehicle imposed pursuant to this section must be collected as provided in this chapter.

History: **En. Sec. 3, Ch. 525, L. 1989; amd. Sec. 28, Ch. 496, L. 1997.**

Cross-References

Exemption for motion picture and television commercial property, 15-6-215.

Taxation of motion picture and television commercial property, 15-24-305.

61-3-521. Fee in lieu of tax for certain vehicles. (1) There is a fee in lieu of property tax imposed on motor homes, travel trailers, and campers and on trailers, pole trailers, and semitrailers with a declared weight of less than 26,000 pounds. The fee is in addition to annual registration fees.

(2) The fee imposed by subsection (1) need not be paid by a dealer for vehicles that constitute inventory of the dealership.

History: **En. Sec. 1, Ch. 712, L. 1979; amd. Sec. 1, Ch. 13, L. 1981; amd. Sec. 10, Ch. 575, L. 1993; amd. Sec. 8, Ch. 121, L. 1997.**

Cross-References
Camper defined, 61-1-129.
Motor home defined, 61-1-130.
Travel trailer defined, 61-1-131.
Motor vehicle dealers, Title 61, ch. 4, part 1.

61-3-522. Schedule of fees for motor homes. (1) The owner of a motor home shall pay a fee based on the age of the motor home according to the following schedule:

less than 2 years old	$250
2 years old and less than 3 years old	230
3 years old and less than 4 years old	195
4 years old and less than 5 years old	150
5 years old and less than 6 years old	125
6 years old and less than 7 years old	100
7 years old and less than 8 years old	75
8 years old and older	65

(2) (a) Except as provided in subsection (2)(b), the age of a motor home is determined by subtracting the manufacturer's designated model year from the current calendar year.

(b) If the purchase year of a motor home precedes the designated model year of the motor home and the motor home is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.

History: En. Sec. 2, Ch. 712, L. 1979; amd. Sec. 30, Ch. 611, L. 1987; amd. Sec. 4, Ch. 402, L. 1997.

Cross-References
Motor home defined, 61-1-130.

61-3-523. Schedule of fees for travel trailers and campers. (1) The fee imposed by 61-3-521 on a travel trailer that is less than 3 years old is $60. In all other cases the fee is $22.50.

(2) The fee imposed by 61-3-521 on a camper that is less than 3 years old is $52.50. In all other cases the fee is $22.50.

(3) (a) Except as provided in subsection (3)(b), the age of a travel trailer or camper is determined by subtracting the manufacturer's designated model year from the current calendar year.

(b) If the purchase year of a travel trailer or camper precedes the designated model year of the travel trailer or camper and the travel trailer or camper is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.

History: En. Sec. 3, Ch. 712, L. 1979; amd. Sec. 31, Ch. 611, L. 1987; amd. Sec. 5, Ch. 402, L. 1997.

Cross-References
Camper defined, 61-1-129.
Travel trailer defined, 61-1-131.

61-3-524. Decal required on camper — application for decal — application fee — issuance. (1) A camper, subject to the fee in lieu of tax imposed under 61-3-521, may not be operated by a person on the public highways or streets in this state unless there is displayed in a conspicuous place on the camper a decal as visual proof that the fee has been paid on the camper for the current year.

(2) Application for the issuance of the decal must be made to the county treasurer in the county of the owner's residence, accompanied by an application fee of $1, on a form furnished by the department, which may be obtained at the county treasurer's office. The form must provide for substantially the following information:

(a) name of owner;
(b) address;
(c) name of manufacturer;
(d) model number;
(e) make;
(f) year of manufacture; and
(g) other information that the department may require.

(3) (a) The county treasurer shall sign the application and transmit the application to the department.

(b) Upon receipt of the application in approved form and payment of the fee in lieu of tax by the applicant, the county treasurer shall issue to the applicant a numbered decal in the style and design prescribed by the department and of a different color than the preceding year.

History: En. Sec. 2, Ch. 414, L. 1973; R.C.M. 1947, 53-645; amd. Sec. 10, Ch. 712, L. 1979; Sec. 61-3-441, MCA 1979; redes. 61-3-524 by Code Commissioner, 1979; amd. Sec. 32, Ch. 611, L. 1987; amd. Sec. 4, Ch. 715, L. 1991; amd. Sec. 9, Ch. 121, L. 1997.

Cross-References

Duties of County Treasurer, 7-6-2111.
Administration of revenue laws, 15-1-201.
Camper defined, 61-1-129.
Penalty for violation of camper decal requirement, 61-3-606.

61-3-525. Annual application for decals. (1) Camper decals expire annually on April 30. Application for registration must be made to the county treasurer not later than June 15 to renew the camper decal. If the vehicle to which the camper is customarily attached may be reregistered by mail, application for the camper decals may also be made by mail in the manner provided in 61-3-535.

(2) The owner of a camper with a decal is entitled to operate the camper between May 1 and June 15 without displaying the decal for the current registration year if the owner, during that period, displays upon the camper the decal from the previous registration year.

History: En. Sec. 4, Ch. 414, L. 1973; amd. Sec. 1, Ch. 211, L. 1977; R.C.M. 1947, 53-647; amd. Sec. 11, Ch. 712, L. 1979; Sec. 61-3-442, MCA 1979; redes. 61-3-525 by Code Commissioner, 1979; amd. Sec. 1, Ch. 450, L. 1991; amd. Sec. 5, Ch. 715, L. 1991; amd. Sec. 1, Ch. 174, L. 1993.

Cross-References

Duties of County Treasurer, 7-6-2111.
Administration of revenue laws, 15-1-201.
Camper defined, 61-1-129.
Reregistration on anniversary date — Department of Justice to make rules, 61-3-315.

61-3-526. Registration of motor homes and travel trailers — reregistration by mail allowed. (1) All registrations of motor homes and travel trailers expire annually on April 30. Application for registration or reregistration must be made to the county treasurer not later than June 15. Reregistration may be made by mail in the manner provided in 61-3-535. If the ownership of a motor home or travel trailer is transferred during the registration year, it must be reregistered and relicensed as provided by statute.

(2) The owner of a motor home or travel trailer registered under the provisions of this section is entitled to operate such vehicle between May 1 and June 15 without displaying the registration certificate of the current registration year if the owner, during that period, displays upon the motor home or travel trailer the number plates, plate, or decal assigned thereto for the previous registration year.

History: En. Sec. 1, Ch. 146, L. 1989; amd. Sec. 2, Ch. 450, L. 1991.

61-3-527. Fee in lieu of tax for motorcycles and quadricycles — schedule of fees. (1) (a) There is a fee in lieu of property tax imposed on motorcycles and quadricycles. The fee is in addition to annual registration fees.

(b) The fee imposed by subsection (1)(a) is not required to be paid by a dealer for motorcycles or quadricycles that constitute inventory of the dealership.

(2) The owner of a motorcycle or quadricycle shall pay a fee based on the age of the motorcycle or quadricycle and the size of the engine, as follows:

(a) The fee schedule for a motorcycle or quadricycle with an engine that measures from 1 cubic centimeter to 600 cubic centimeters is as follows:

(i) less than 2 years old, $30;

(ii) 2 years old and less than 5 years old, $25;

(iii) 5 years old and less than 11 years old, $15; and

(iv) 11 years old and older, $10.

(b) The fee schedule for a motorcycle or quadricycle with an engine that measures from 601 cubic centimeters to 1,000 cubic centimeters is as follows:

(i) less than 2 years old, $70;

(ii) 2 years old and less than 5 years old, $55;

(iii) 5 years old and less than 11 years old, $40; and

(iv) 11 years old and older, $30.

(c) The fee schedule for a motorcycle or quadricycle with an engine that measures 1,001 cubic centimeters and larger is as follows:

(i) less than 2 years old, $110;

(ii) 2 years old and less than 5 years old, $90;

(iii) 5 years old and less than 11 years old, $65; and

(iv) 11 years old and older, $40.

(3) (a) Except as provided in subsection (3)(b), the age of a motorcycle or quadricycle is determined by subtracting the manufacturer's designated model year from the current calendar year.

(b) If the purchase year of a motorcycle or quadricycle precedes the designated model year of the motorcycle or quadricycle and the motorcycle or quadricycle is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.

History: En. Sec. 1, Ch. 580, L. 1995; amd. Sec. 6, Ch. 402, L. 1997; amd. Sec. 29, Ch. 496, L. 1997.

61-3-528. Definitions. As used in 61-3-529 and this section, unless the context requires otherwise, the following definitions apply:

(1) "Bus" has the same meaning as provided in 61-1-115.

(2) "Manufacturer's rated gross combined weight" means the manufacturer's published weight of the allowable load for a truck tractor and trailer combined and includes the weight of the truck tractor and the trailer.

(3) "Manufacturer's rated gross vehicle weight" means the manufacturer's published weight of the allowable load for a truck and includes the weight of the truck.

(4) "Truck" means a motor vehicle designed to carry an entire load. The truck may consist of a chassis and body or a chassis-cab and body or it may be of unitized construction so that the body and cab appear to be a single unit.

(5) "Truck tractor" has the same meaning as provided in 61-1-108.

History: En. Sec. 32, Ch. 496, L. 1997.

61-3-529. Schedule of fees for buses, motor vehicles having rated capacity of more than 1 ton, and truck tractors — proration — exemption. (1) (a) There is a fee in lieu of property tax imposed on buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors. The fee is in addition to annual registration fees.

(b) The fee imposed by subsection (1)(a) is not required to be paid by a dealer of buses, trucks, or truck tractors that constitute inventory of the dealership.

(2) Subject to the conditions of subsection (4), the owner of a bus, truck with a manufacturer's rated capacity of more than 1 ton, or truck tractor shall pay a fee in lieu of tax based on the age and manufacturer's rated capacity of the vehicle according to the following schedule:

Age of Vehicle	Rated Capacity (in pounds)			
(in years)	16,999 or less	17,000-26,999	27,000-54,999	55,000 or more
1 or less	$234	$334	$568	$750
2	218	300	500	600
3	200	268	440	532
4	184	234	368	484
5	166	218	320	390
6	150	200	268	334
7	132	182	234	294
8	116	166	200	250
9	100	150	184	218
10	82	116	158	184
11-12	66	100	134	152
13-14	56	74	104	122
15-16	50	60	76	94
17-18	36	52	58	72
19-20	26	38	44	52
21 or more	20	24	32	40

(3) The age of the vehicle is determined by subtracting the manufacturer's model year of the vehicle from the calendar year for which the fee in lieu of tax is due.

(4) (a) The manufacturer's rated capacity for a bus or truck with a manufacturer's rated capacity of more than 1 ton is the manufacturer's rated gross vehicle weight.

(b) The manufacturer's rated capacity for a truck tractor is the manufacturer's rated gross combined weight.

(5) A motor vehicle brought into the state or otherwise used for the exclusive purpose of filming motion pictures or television commercials is exempt from the fee in lieu of tax if the vehicle does not remain in the state for a period in excess of 180 consecutive days in a calendar year.

(6) Except as provided in 61-3-520, the fee in lieu of tax on a vehicle subject to this section that is brought or driven into this state by a nonresident person for hire, compensation, or profit must be prorated according to the ratio that the remaining number of months in the year bears to the total number of months in the year.

(7) (a) The fee in lieu of tax on a vehicle subject to this section that is registered in the state for the first time must be prorated as provided in subsection (6).

(b) The fee in lieu of tax on a vehicle subject to this section that is reregistered in the state is for a full year.

(8) The fee in lieu of tax may not be refunded.

History: En. Sec. 33, Ch. 496, L. 1997.

61-3-530. Schedule of fees for trailers — exception. (1) Except as provided in subsection (4), the owner of a trailer, pole trailer, or semitrailer that has a declared weight of less than 26,000 pounds shall pay the fee imposed pursuant to 61-3-521. The fee is based on the age and declared weight of the trailer or semitrailer according to the following schedule:

Age (in years)	Declared Weight (in pounds)		
	0-6,000	6,001-16,000	16,001-25,999
Less than 5 years old	$16	$55	$74
5 years old and less than 10 years old	11	32	41
10 years old and older	6	17	23

(2) (a) Except as provided in subsection (2)(b), the age of a trailer, pole trailer, or semitrailer is determined by subtracting the manufacturer's designated model year from the current calendar year. For trailers, pole trailers, and semitrailers that do not have a designated model year, the department shall determine a year of manufacture.

(b) If the purchase year of a trailer, pole trailer, or semitrailer precedes the designated model year of the trailer, pole trailer, or semitrailer and the trailer, pole trailer, or semitrailer is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.

(3) The declared weight is the total unladen weight of the trailer, pole trailer, or semitrailer plus the maximum load declared by the owner to be carried on the trailer, pole trailer, or semitrailer.

(4) This section does not apply to a trailer, pole trailer, or semitrailer that has a declared weight of less than 26,000 pounds and that is registered through a proportional registration agreement under 61-3-721.

History: En. Sec. 10, Ch. 121, L. 1997; amd. Sec. 8, Ch. 402, L. 1997.

61-3-531 through 61-3-534. Repealed. Sec. 38, Ch. 611, L. 1987.

Compiler's Comments

Histories of Repealed Sections:

61-3-531. En. Sec. 1, Ch. 614, L. 1981.

61-3-532. En. Sec. 2, Ch. 614, L. 1981.

61-3-533. En. Sec. 3, Ch. 614, L. 1981; amd. Sec. 1, Ch. 115, L. 1983; amd. Sec. 2, Ch.

685, L. 1985; amd. Sec. 2, Ch. 702, L. 1985; amd. Secs. 1, 2, Ch. 1, Sp. L. 1985.

61-3-534. En. Sec. 4, Ch. 614, L. 1981.

61-3-535. Vehicle reregistration by mail — reminder notice and reregistration notice by mail. (1) The department may allow the owner of a motor vehicle to renew the registration of a vehicle by mail when the value, age, length, weight, or other criteria used to determine the tax or fee for a particular type of vehicle is available to the department by electronic means.

(2) Any mail reregistration procedure developed by the department must include a procedure to facilitate automated handling of mail reregistration or recertification and must provide for a written reminder notice by mail to a vehicle owner of the requirement to reregister the owner's vehicle with the county treasurer or to apply for the annual camper decal.

(3) The department shall adopt rules to implement the mail reregistration and decal application procedure.

History: En. Sec. 5, Ch. 614, L. 1981; amd. Sec. 1, Ch. 32, L. 1985; amd. Sec. 13, Ch. 503, L. 1985; amd. Sec. 1, Ch. 420, L. 1987; amd. Sec. 33, Ch. 611, L. 1987; amd. Sec. 3, Ch. 450, L. 1991; amd. Sec. 8, Ch. 604, L. 1991; amd. Sec. 3, Ch. 365, L. 1993; amd. Sec. 12, Ch. 580, L. 1995; amd. Sec. 11, Ch. 121, L. 1997; amd. Sec. 30, Ch. 496, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duties of County Treasurer, 7-6-2111.

Boats — mail renewal and recertification, 23-2-520.

Snowmobiles — mail renewal and recertification, 23-2-620.

Off-highway vehicles — mail renewal and recertification, 23-2-810.

61-3-536. Repealed. Sec. 38, Ch. 611, L. 1987.

History: En. Sec. 6, Ch. 614, L. 1981; amd. Sec. 2, Ch. 115, L. 1983; amd. Sec. 10, Ch. 708, L. 1983; amd. Sec. 3, Ch. 702, L. 1985; amd. Sec. 2, Ch. 1, Sp. L. 1985; amd. Sec. 7, Ch. 30, Sp. L. June 1986.

61-3-537. *(Temporary)* **Local option vehicle tax.** (1) A county may impose a local vehicle tax on vehicles subject to a tax under 61-3-504 at a rate of up to 0.7% of the value determined under 61-3-503, in addition to the tax imposed under 61-3-504.

(2) A local vehicle tax is payable at the same time and in the same manner as the tax imposed under 61-3-504. The first priority of the local vehicle tax is for district court funding, and the tax is distributed as follows:

(a) 50% to the county; and

(b) the remaining 50% to the county and the incorporated cities and towns within the county, apportioned on the basis of population. The distribution to a city or town is determined by multiplying the amount of money available by the ratio of the population of the city or town to the total county population. The distribution to the county is determined by multiplying the amount of money available by the ratio of the population of unincorporated areas within the county to the total county population.

(3) The governing body of a county may impose, revise, or revoke a local vehicle tax if the imposition, revision, or revocation of the tax is approved by the electorate of the county. The imposition, revision, or revocation of the tax is effective on January 1 following its approval by the electorate. The county governing body by resolution may provide for the distribution of the local vehicle tax. *(Terminates June 30, 2005—sec. 2, 3, Ch. 217, L. 1995.)*

61-3-537. *(Effective July 1, 2005)* **Local option vehicle tax.** (1) A county may impose a local vehicle tax on vehicles subject to a tax under 61-3-504 at a rate of up to 0.7% of the value determined under 61-3-503, in addition to the tax imposed under 61-3-504.

(2) A local vehicle tax is payable at the same time and in the same manner as the tax imposed under 61-3-504 and is distributed in the same manner, based on the registration address of the owner of the motor vehicle.

(3) The governing body of a county may impose, revise, or revoke a local vehicle tax if the imposition, revision, or revocation of the tax is approved by the electorate of the county. The imposition, revision, or revocation of the tax is effective on January 1 following its approval by the electorate.

History: En. Sec. 36, Ch. 611, L. 1987; amd. Sec. 2, Ch. 749, L. 1991; amd. Sec. 1, Ch. 217, L. 1995; amd. Sec. 31, Ch. 496, L. 1997; amd. Sec. 4, Ch. 180, L. 1999.

Compiler's Comments

1999 Amendment: (Temporary version) Chapter 180 in (1) increased rate from 0.5% to 0.7%; and in (3) substituted language imposing, revising, or revoking a local vehicle tax for former language that read: "(3) The governing body of a county may impose, revise, or revoke a local vehicle tax by adopting a resolution before July 1, after conducting a public hearing on the proposed resolution. The resolution may provide for the distribution of the local vehicle tax." Amendment effective January 1, 2000.

(Version effective July 1, 2005) In (1) increased rate from 0.5% to 0.7%; in (3) substituted language imposing, revising, or revoking a local vehicle tax for former language that read: "(3) The governing body of a county may impose, revise, or revoke a local vehicle tax by adopting a resolution before July 1, after conducting a public hearing on the proposed resolution."

Applicability: Section 6, Ch. 180, L. 1999, provided: "[This act] applies to registration periods beginning after December 31, 1999, and to fleet registrations after December 31, 1999."

61-3-538 through 61-3-540 reserved.

61-3-541. Repealed. Sec. 38, Ch. 611, L. 1987.

History: En. Sec. 2, Ch. 516, L. 1985.

61-3-542. Repealed. Sec. 38, Ch. 611, L. 1987.

History: En. Sec. 3, Ch. 516, L. 1985.

61-3-543 through 61-3-550 reserved.

61-3-551. Terminated. Sec. 39(5), Ch. 15, Sp. L. July 1992.

History: En. Sec. 33, Ch. 15, Sp. L. July 1992.

Part 6

Penalties — Enforcement

61-3-601. Penalty for violations. Except as otherwise provided, a violation of any of the provisions of this chapter is a misdemeanor and is punishable by a fine not exceeding $500. Nothing in this section prevents the prosecution of a person for an offense committed under any other law.

History: En. Sec. 2, Ch. 158, L. 1931; re-en. Sec. 1755.1, R.C.M. 1935; amd. Sec. 1, Ch. 122, L. 1961; amd. Sec. 2, Ch. 256, L. 1965; R.C.M. 1947, 53-102(part); amd. Sec. 42, Ch. 421, L. 1979; amd. Sec. 12, Ch. 724, L. 1991.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Registration — license plate required — display, 61-3-301.

61-3-602. Enforcement. It is mandatory upon all police and peace officers of the state, of the counties of the state, and of towns, cities, and villages to carry out the provisions of chapter 4, part 1, and this chapter.

History: En. Sec. 2, Ch. 158, L. 1931; re-en. Sec. 1755.1, R.C.M. 1935; amd. Sec. 1, Ch. 122, L. 1961; amd. Sec. 2, Ch. 256, L. 1965; R.C.M. 1947, 53-102(part); amd. Sec. 43, Ch. 421, L. 1979; amd. Sec. 20, Ch. 409, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 409 at end substituted "chapter 4, part 1" for "61-4-101 through 61-4-105". Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

Cross-References

Local government — law enforcement, Title 7, ch. 32.

State — law enforcement, Title 44.

61-3-603. Penalty for alteration or forgery of certificate of ownership or assignment thereof. Any person who alters or forges or causes to be altered or forged any motor vehicle certificate of ownership or any assignment thereof or who holds or uses any such certificate or assignment knowing it to have been altered or forged is guilty of a felony and upon conviction thereof is subject to a fine of not more than $5,000 or to imprisonment in any penal institution within the state for a period of not more than 10 years, or both, in the discretion of the court.

History: En. Sec. 12, Ch. 113, L. 1925; re-en. Sec. 1763.4, R.C.M. 1935; amd. Sec. 1, Ch. 334, L. 1969; R.C.M. 1947, 53-136; amd. Sec. 44, Ch. 421, L. 1979.

Cross-References

Classification of offenses, 45-1-201.

Felony defined, 45-2-101.

Certificates of ownership, Title 61, ch. 3, part 2.

61-3-604. Penalty for altering identification number. (1) A person who willfully removes or falsifies an identification number of a motor vehicle or motor vehicle engine is punishable by a fine of not more than $5,000 or imprisonment in the state prison for a period of not more than 10 years, or both.

(2) Any person or persons, firm, or corporation that sells or offers for sale in this state a vehicle the original vehicle identification number of which has been destroyed, removed, altered, covered, or defaced, with the exception of vehicles bearing a state-assigned identification number in accordance with 61-3-107, is punishable by a fine of not less than $200 or more than $500 and by imprisonment in the county jail for a term of not less than 30 days or more than 180 days. Upon a second or subsequent conviction under this subsection, the punishment shall be imprisonment in the state prison for a term of not less than 1 year or more than 5 years or a fine in an amount not to exceed $50,000, or both.

History: (1)En. Sec. 1, Ch. 256, L. 1969; Sec. 53-139.1, R.C.M. 1947; (2)En. Sec. 15, Ch. 113, L. 1925; re-en. Sec. 1763.7, R.C.M. 1935; amd. Sec. 31, Ch. 121, L. 1965; Sec. 53-139, R.C.M 1947; R.C.M. 1947, 53-139(part), 53-139.1; amd. Sec. 45, Ch. 421, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 3, Ch. 272, L. 1991; amd. Sec. 13, Ch. 724, L. 1991.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Obscuring identity of machine, 45-6-326.

Misdemeanor — no penalty specified, 46-18-212.

Sales and distribution of motor vehicles, Title 61, ch. 4.

61-3-605. Penalty for nonpayment of sales tax. Any owner or operator of a motor vehicle who violates any provision of 61-3-502 is guilty of a misdemeanor and shall be punished by a fine of not more than $300, or by a sentence of not more than 60 days in the county jail, or both.

History: **En. Sec. 6-216, Ch. 197, L. 1965; R.C.M. 1947, 32-3316; amd. Sec. 2, Ch. 585, L. 1987.**

Cross-References

Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.
Motor vehicle defined, 61-1-102.
Truck defined, 61-1-107.
Truck tractor defined, 61-1-108.
Trailer defined, 61-1-111.
Semitrailer defined, 61-1-112.
Bus defined, 61-1-115.

61-3-606. Penalty for violation of camper decal requirement. Operation of a camper in violation of 61-3-524 is a misdemeanor punishable by a fine not to exceed $50.

History: **En. Sec. 3, Ch. 414, L. 1973; R.C.M. 1947, 53-646.**

Cross-References

Camper defined, 61-1-129.

61-3-607. Penalty for tampering with odometer or violating odometer statement requirements. (1) It is unlawful for a person to tamper with the odometer of a motor vehicle. It is considered tampering if a person removes, turns back, or changes the reading on the odometer, except when repairing or replacing a defective odometer and setting it anew to show the true mileage, or if a person sells, offers for sale, uses, installs, or causes to be installed any device that causes the odometer to register a mileage reading other than the true mileage for the purpose of deceiving a prospective purchaser. For purposes of this section, the true mileage is that driven by the vehicle as registered by the odometer within the manufacturer's designed tolerance.

(2) A person who purposely or knowingly violates the provisions of 61-3-206 or subsection (1) of this section is punishable by a fine of not more than $5,000 or imprisonment in the state prison for a period of not more than 10 years, or both. If that person is a motor vehicle dealer, the department shall revoke the dealer's license. Action by the department under this subsection must conform to the contested case procedures in Title 2, chapter 4.

History: **En. Sec. 3, Ch. 324, L. 1985; amd. Sec. 13, Ch. 503, L. 1985; amd. Sec. 4, Ch. 272, L. 1991.**

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.
Transfer of interest, 61-3-201.

Part 7

Registration of Foreign Vehicles

61-3-701. Foreign vehicles used in gainful occupation to be registered — reciprocity. (1) Before a foreign licensed motor vehicle may be operated on the highways of this state for hire, compensation, or profit or before the owner or user of the vehicle uses the vehicle if the owner or user is engaged in gainful occupation or business enterprise in the state, including highway work, the owner of the vehicle shall apply to a county treasurer for registration upon an application form furnished by the department. Upon satisfactory evidence of ownership submitted to the county treasurer and the payment of motor vehicle taxes or fees in lieu of taxes, if appropriate, as required by 15-8-201, 15-8-202, 15-24-301, 61-3-504, 61-3-529, or 61-3-537, the treasurer shall accept the application for registration and shall collect the regular license fee required for the vehicle.

(2) Upon payment of the fees or taxes, the treasurer shall issue to the applicant a copy of the certificate entitled "Owner's Certificate of Registration and Payment Receipt" and forward a duplicate copy of the certificate to the department. The treasurer shall at the same time issue to the applicant the proper license plates or other identification markers, which must at all times be displayed upon the vehicle when operated or driven upon roads and highways of this state during the effective period of the license.

(3) The registration receipt does not constitute evidence of ownership but must be used only for registration purposes. A Montana certificate of ownership may not be issued for this type of registration.

(4) This section is not applicable to a vehicle covered by a valid and existing reciprocal agreement or declaration entered into under the provisions of the laws of Montana.

History: En. Sec. 7, Ch. 121, L. 1929; amd. Sec. 7, Ch. 126, L. 1933; re-en. Sec. 1760.7, R.C.M. 1935; amd. Sec. 1, Ch. 93, L. 1939; amd. Sec. 1, Ch. 296, L. 1947; amd. Sec. 3, Ch. 195, L. 1953; amd. Sec. 1, Ch. 143, L. 1955; amd. Sec. 26, Ch. 206, L. 1963; amd. Sec. 2, Ch. 290, L. 1967; R.C.M. 1947, 53-129; amd. Sec. 46, Ch. 421, L. 1979; amd. Sec. 35, Ch. 614, L. 1981; amd. Sec. 13, Ch. 140, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 26, Ch. 516, L. 1985; amd. Sec. 34, Ch. 611, L. 1987; amd. Sec. 37, Ch. 496, L. 1997.

Cross-References

Duties of County Treasurer, 7-6-2111.

Duties of Department of Justice — records, 61-3-101.

Registrant as prima facie owner of vehicle, 61-3-105.

Registration, Title 61, ch. 3, part 3.

Alternative gross weight fees on truck trailer combinations, 61-10-203.

GVW licensing requirements — exemptions, 61-10-214.

61-3-702. Foreign vehicles to display number plates. All foreign registered and licensed motor vehicles shall also carry in plain sight thereon the license plates or device from such other state or foreign country.

History: En. Sec. 8, Ch. 121, L. 1929; amd. Sec. 8, Ch. 126, L. 1933; re-en. Sec. 1760.8, R.C.M. 1935; R.C.M. 1947, 53-130.

Cross-References

Residents operating motor vehicles — licenses issued by another state forbidden, 61-3-302.

Number plates, 61-3-332.

61-3-703. Purpose. Sections 61-3-701 and 61-3-702 shall be solely for the purpose of taxation, registration, and identification of vehicles operated in this state that have paid a license in another state or foreign country, and otherwise than as herein specifically set forth shall not be construed as a repeal of any laws or parts of laws having to do with the registration or licensing of automobiles within the state.

History: En. Sec. 10, Ch. 121, L. 1929; amd. Sec. 9, Ch. 126, L. 1933; re-en. Sec. 1760.9, R.C.M. 1935; R.C.M. 1947, 53-131; amd. Sec. 4, Ch. 598, L. 1981.

61-3-704. Penalty. Any person operating a vehicle in violation of the intent and purpose of 61-3-701 or 61-3-702 shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $10 or more than $50 or confined in the county jail for not more than 30 days or both such fine and imprisonment.

History: En. Sec. 11, Ch. 121, L. 1929; amd. Sec. 10, Ch. 126, L. 1933; re-en. Sec. 1760.10, R.C.M. 1935; R.C.M. 1947, 53-132.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

61-3-705 and 61-3-706 reserved.

61-3-707. Foreign vehicles used for transportation in connection with employment. (1) (a) Before a motor vehicle taxed pursuant to 15-24-301(4) may be operated in Montana for a calendar quarter, the person responsible for payment of taxes shall apply for and obtain a window decal provided by the department.

(b) Decals must be color-coded to distinguish the four quarterly registration periods of the year.

(c) An applicant may purchase a decal for more than one registration quarter at a time by paying the appropriate amount.

(d) There is a $2 fee for each decal, and money collected from this fee must be deposited to the county general fund. The $2 fee is in addition to the tax.

(e) A current window decal must be displayed on the lower right-hand corner of the windshield.

(2) (a) Before a motor vehicle exempted pursuant to 15-6-217 may be operated in Montana, the person responsible for the motor vehicle shall apply for and obtain a window decal from the county treasurer. The department shall supply the decals to the county treasurers.

(b) An application approved by the department must include a verification from the employer that the person is employed by a health care facility in a rural, medically underserved area that experiences difficulty in recruiting and retention of health care professionals.

(c) Decals expire each year on December 31 of the year in which issued, and application for reregistration must be filed with the county treasurer no later than February 15 of each year. Decals must be color-coded to distinguish the year.

(d) A current window decal must be displayed on the lower right-hand corner of the windshield.

History: En. Sec. 3, Ch. 598, L. 1981; amd. Sec. 3, Ch. 246, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 246 at end of (1)(a) inserted "provided by the department"; inserted (2) requiring health care professional vehicle exempted from taxation to display current window decal, requiring employer verification, providing reregistration timeline, and specifying correct placement of decal; and made minor changes in style. Amendment effective July 1, 1999.

Cross-References

Junk vehicle disposal fee, 61-3-508.

61-3-708. Cooperative or reciprocal registration — filing of insurance — fee. (1) The department may enter into written agreements with agencies of other states to allow for the cooperative or reciprocal state registration of interstate or international motor carriers and authorize the agency of a participating state to:

(a) issue interstate motor carrier registrations, stamps, and permits;

(b) accept filings of insurance, financial responsibility, and orders;

(c) collect and disburse fees;

(d) share and exchange information for audit, reporting, and enforcement purposes; and

(e) perform any other function that the department determines is justified to facilitate the cooperative or reciprocal registration.

(2) (a) The department may impose a fee set by rule on an interstate or international motor carrier for the administration of this section. The fee must be paid on each motor vehicle operated by the motor carrier on the public highways of this state. At the time of initial registration and each succeeding year, at a time set by the department, the motor carrier shall pay the fee to the department.

(b) The department shall remit the fee to the state treasurer for deposit in the general fund.

History: **En. Sec. 1, Ch. 358, L. 1995.**

61-3-709. Identification of ownership of certain large motor vehicles. (1) (a) A person may not operate a motor vehicle or combination of vehicles, except farm vehicles, having a gross weight of more than 10,000 pounds upon the highways of the state unless there is displayed on both sides of each vehicle operated under its own power, either alone or in combination:

(i) the name or trade name and city and state of the person or corporation under whose jurisdiction the vehicle is being operated; or

(ii) the trade name and department of transportation number of the person or corporation under whose jurisdiction the vehicle is being operated.

(b) The display of name must be in letters in sharp contrast to the background and in size, shape, and color readily legible in daylight from a distance of 50 feet while the vehicle is not in motion. The display must be kept and maintained to remain legible. The display may be accomplished either by painting the information on the vehicle or through the use of a decal or a removable device that is prepared so that it meets the identification and legibility requirements of this section.

(2) This section does not apply to motor vehicles being:

(a) transported to dealers from point of manufacture;

(b) transported from one dealer to another;

(c) demonstrated to a prospective buyer; or

(d) delivered to a buyer from a dealer or a manufacturer.

History: **En. Sec. 2, Ch. 358, L. 1995.**

61-3-710. Rulemaking authority. The department of transportation may adopt and enforce rules for the administration of the single-state registration system, including the setting of a fee, and for other matters necessary to carry out the provisions of 61-3-708 and 61-3-709.

History: **En. Sec. 5, Ch. 358, L. 1995.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

61-3-711. Declaration of policy. It is the policy of this state to promote and encourage the fullest possible use of its highway system by authorizing the making and execution of motor vehicle reciprocal or proportional registration agreements, arrangements, and declarations with other states, provinces, territories, and countries with respect to vehicles registered in this and such other states, provinces, territories, and countries thus contributing to the economic and social development and growth of this state.

History: **En. Sec. 1, Ch. 206, L. 1963; R.C.M. 1947, 53-701.**

Cross-References

Special fuel user registration card, 15-70-302.

Multistate Highway Transportation Agreement, Title 61, ch. 10, part 11.

61-3-712. Definitions. As used in 61-3-711 through 61-3-733 the following definitions apply:

(1) "Apportionable vehicle" means a vehicle which is used or intended for use in more than one jurisdiction and used for the transportation of persons for hire, compensation, or profit, or designed or used primarily for the transportation of property.

(2) "Fleet" means one or more apportionable vehicles.

(3) "Jurisdiction" means and includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country, and a state or province of a foreign country.

(4) "Legal residence" means a jurisdiction where the person lives or conducts his business. This residence need not be coupled with the intent to live or conduct the business there on a permanent basis. The use of the word "residence" in 61-3-711 through 61-3-733 shall be confined to the definition given, and shall not be confused with the word "domicile". This definition of "residence" further recognizes that a person may have several residences, but only one domicile.

(5) "Preceding year" means a period of 12 consecutive months fixed by the department of transportation, which period shall be within 18 months immediately preceding the commencement of the registration or license year for which proportional registration is sought. The department in fixing the period shall make it conform to the terms, conditions, and requirements of any applicable agreement or arrangements for the proportional registration of vehicles.

(6) (a) "Properly registered", as applied to place of registration, means:

(i) the jurisdiction where the person registering the vehicle has his legal residence;

(ii) in the case of an apportionable vehicle, the jurisdiction in which it is registered if the enterprise in which the vehicle is used has a place of business therein and if the vehicle is most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled in or from the place of business and the vehicle has been assigned to the place of business; or

(iii) in the case of an apportionable vehicle, the jurisdiction where because of an agreement or arrangement between two or more jurisdictions or pursuant to a declaration the vehicle has been registered as required by that jurisdiction.

(b) In case of doubt or dispute as to the proper place of registration of a vehicle, the transportation commission shall make the final determination, but in making the determination, the commission may confer with departments of the other jurisdictions affected.

History: **En. Sec. 2, Ch. 206, L. 1963; amd. Sec. 190, Ch. 316, L. 1974; R.C.M. 1947, 53-702(1), (2), (4) thru (6), (10); amd. Sec. 1, Ch. 36, L. 1981; amd. Sec. 1, Ch. 414, L. 1983; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 6, Ch. 75, L. 1995.**

Cross-References

Residence — rules for determining, 1-1-215.

61-3-713. Authority of department of transportation. The department of transportation may execute or make arrangements, agreements, or declarations to carry out 61-3-711 through 61-3-733.

History: En. Sec. 4, Ch. 206, L. 1963; amd. Sec. 191, Ch. 316, L. 1974; R.C.M. 1947, 53-704; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Highways — legislative policy and intent, 60-1-102.

61-3-714. Authority for reciprocity agreements, provisions, reciprocity standards. The department of transportation may enter into an agreement or arrangement with the duly authorized representatives of other jurisdictions, granting to vehicles or to owners of vehicles which are properly registered or licensed in those jurisdictions, and for which evidence of compliance is supplied, benefits, privileges, and exemptions from payment, wholly or partially, of any taxes, fees, or other charges imposed upon those vehicles or owners with respect to the operation or ownership of the vehicles under the laws of this state. The agreement or arrangement shall provide that vehicles properly registered or licensed in this state, when operated upon highways of those other jurisdictions, shall receive exemptions, benefits, and privileges of a similar kind or to a similar degree as are extended to vehicles properly registered or licensed in the jurisdiction when operated in this state. The agreement or arrangement shall, in the judgment of the department, be in the best interests and fair and equitable to this state and its citizens determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce.

History: En. Sec. 5, Ch. 206, L. 1963; amd. Sec. 192, Ch. 316, L. 1974; R.C.M. 1947, 53-705; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Department of Transportation — general powers and duties, Title 60, ch. 2, part 2.

61-3-715. Base state registration reciprocity. An agreement or arrangement entered into or a declaration issued under the authority of 61-3-711 through 61-3-733 may contain provisions authorizing the registration or licensing in another jurisdiction of vehicles located in or operated from a base in such other jurisdiction, which vehicles otherwise would be required to be registered or licensed in this state; and in such event the exemptions, benefits, and privileges extended by such agreement, arrangement, or declaration shall apply to such vehicles, when properly licensed or registered in such base jurisdiction.

History: En. Sec. 6, Ch. 206, L. 1963; R.C.M. 1947, 53-706.

61-3-716. Proportional registration of fleet vehicles. (1) If a jurisdiction permits or requires the licensing of fleets of vehicles in interstate or combined interstate and intrastate commerce and payment of registration fees, license fees, taxes, or other fixed fees on those vehicles on an apportionment basis commensurate with and determined by the miles traveled on and the use made of the jurisdiction's highways, as compared with the miles traveled on and the use made of other jurisdiction's highways or any other equitable basis of apportionment, and exempts vehicles registered in any other jurisdiction under this apportionment basis from the requirements of full payment of its own registration, license fees, taxes, or other fixed fees, then the department may, by agreement, adopt exemptions with respect to vehicles of these fleets, whether owned by residents or nonresidents of this state and regardless of where based. An agreement, under the terms, conditions, or restrictions that the department considers proper, may provide that owners of vehicles operated in interstate or combined interstate and intrastate commerce in this state be permitted to pay registration, license fees, taxes, or other fixed fees on an apportionment basis, commensurate with and determined by the miles traveled on and the use made of the highways of this state as compared with the use made of the highways of other jurisdictions or any other equitable basis of apportionment. This agreement may not authorize or be construed to authorize a vehicle so registered to be operated in intrastate commerce in this state unless the owner of the vehicle has been granted intrastate authority or rights by the public service commission if a grant is otherwise required by law.

(2) The department of transportation may adopt rules that it considers necessary to carry out and administer this section, and the registration of fleet vehicles under 61-3-711 through 61-3-733 is subject to the rights, terms, and conditions granted by or contained in any applicable agreement, arrangement, or declaration made by the department. The department of transportation shall adopt rules providing for a change of registration period for a fleet in a case in which the owner of the fleet requests that the registration period be changed to coincide with the registration period of one or more other fleets in the same ownership.

History: **En. Sec. 7, Ch. 206, L. 1963; amd. Sec. 1, Ch. 88, L. 1965; amd. Sec. 193, Ch. 316, L. 1974; R.C.M. 1947, 53-707; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 4, Ch. 42, L. 1995.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Department of Transportation — general powers and duties, Title 60, ch. 2, part 2.

61-3-717. Declarations of extent of reciprocity. In the absence of an agreement or arrangement with another jurisdiction, the department may examine the laws and requirements of the jurisdiction and declare the extent and nature of exemptions, benefits, and privileges to be extended to vehicles properly registered or licensed in the other jurisdiction, or to the owners of the vehicles which are in the judgment of the department in the best interests and fair and equitable to this state and its citizens determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce.

History: **En. Sec. 8, Ch. 206, L. 1963; amd. Sec. 194, Ch. 316, L. 1974; R.C.M. 1947, 53-708.**

61-3-718. Extension of reciprocal privileges to lessees authorized. An agreement or arrangement entered into or a declaration issued under the authority of 61-3-711 through 61-3-733 may contain provisions under which a leased vehicle properly registered by the lessor thereof may be entitled, subject to terms and conditions stated therein, to the exemptions, benefits, and privileges extended by such agreement, arrangement, or declaration.

History: **En. Sec. 9, Ch. 206, L. 1963; R.C.M. 1947, 53-709.**

Cross-References

Motor carriers — leasing of power equipment, 69-12-611.

61-3-719. Automatic reciprocity. On and after March 7, 1963, if no agreement, arrangement, or declaration is in effect with respect to another jurisdiction as authorized by 61-3-711 through 61-3-733, any vehicle properly registered or licensed in such other jurisdiction, and for which evidence of compliance is supplied, shall receive, when operated in this state, the same exemptions, benefits, and privileges granted by such other jurisdictions to vehicles properly registered in this state. Reciprocity extended under this subsection shall apply to commercial vehicles only when engaged exclusively in interstate commerce.

History: En. Sec. 10, Ch. 206, L. 1963; R.C.M. 1947, 53-710.

Cross-References

Motor carriers, Title 69, ch. 12.

61-3-720. Proportional registration not exclusive. Nothing contained in 61-3-711 through 61-3-733 relating to proportional registration of fleet vehicles shall be construed as requiring any vehicle to be proportionally registered if it is otherwise registered in this state for the operation in which it is engaged, including but not by way of limitation regular registration, temporary registration, or trip permit or registration.

History: En. Sec. 11, Ch. 206, L. 1963; R.C.M. 1947, 53-711.

Cross-References

Special permits, 61-10-121.

61-3-721. Proportional registration of fleet vehicles, registration periods, application, fee formula, and payment — transfer of ownership — transfer of license plates. (1) An owner of one or more fleets may register and license each fleet for operation in this state by filing an application with the department of transportation. The application must contain the information pertinent to vehicle registration that is required by the department of transportation.

(2) Each fleet subject to the provisions of 61-3-711 through 61-3-733 must, except as provided in 61-3-318(1) and subsection (6) of this section, be registered for an annual registration period based upon the date that the fleet is first registered in this state.

(3) There are four annual registration periods, each of which begins on the first day of a calendar quarter. As used in this subsection, "calendar quarter" means the period of 3 consecutive months ending March 31, June 30, September 30, or December 31. The periods are:

(a) January 1 through March 31	1st period
(b) April 1 through June 30	2nd period
(c) July 1 through September 30	3rd period
(d) October 1 through December 31	4th period

(4) Registration of a fleet of apportionable vehicles under subsection (2) must be renewed on or before the last day of the month for the designated annual registration period unless a different registration period has been authorized pursuant to 61-3-716(2). The department shall provide for

simultaneous registration of multiple fleets of apportionable vehicles in common ownership.

(5) Except as provided in subsection (6), the application for each fleet may be accompanied by a fee payment computed by:

(a) dividing in-state miles by total fleet miles as defined in the applicable agreement entered into pursuant to 61-3-711 through 61-3-733;

(b) determining the total amount necessary to register each vehicle in the fleet for which registration is requested, based on the regular annual registration fees prescribed by 61-3-321 and chapter 10, part 2, and the property taxes that are due on the fleet;

(c) multiplying the sum obtained under subsection (5)(b) by the fraction obtained under subsection (5)(a).

(6) (a) Each trailer and semitrailer fleet must be registered for a 5-year period based upon the date that the fleet is first registered in this state.

(b) Each trailer and semitrailer in the fleet for which registration is requested must be assessed a registration fee equal to five times the amount prescribed by 61-3-321.

(c) Each trailer or semitrailer must be issued a license plate, a distinctive sticker, or other suitable identification device valid for 5 years from the date of the original application or renewal application.

(d) Registration of a trailer or semitrailer must be renewed on or before the last day of the month for the designated 5-year registration period.

(7) Upon the transfer of ownership of a trailer or semitrailer, the registration of the trailer or semitrailer expires and it is the duty of the transferor to immediately remove the license plates from the trailer or semitrailer.

(8) (a) If the transferor applies for the registration of another trailer or semitrailer at any time during the remainder of the current registration period as shown on the original registration, the transferor may file an application with the department of transportation, accompanied by the original certificate of registration, for the transfer of the license plates. The application for transfer of the license plates must be made by the person or motor carrier in whose name the original license plates to the trailer or semitrailer were issued. The use of the license plates is not legal until the proper transfer of license plates has been made.

(b) License plates may be transferred pursuant to this section without transferring ownership of the trailer or semitrailer for which the license plates were originally issued.

(c) Upon transfer of the license plates, the registration of the trailer or semitrailer from which the license plates were transferred expires. The registration for the trailer or semitrailer must be surrendered to the department of transportation with the application for transfer.

(d) License plates issued for a trailer or semitrailer under this section may be transferred only to a replacement trailer or semitrailer. A license plate fee may not be assessed upon transfer of a license plate.

(9) Applications submitted with fees may be recomputed by the department of transportation. The department of transportation shall furnish a statement showing the overpayment or balance due.

(10) Applications submitted without fees must be computed by the department of transportation. The department of transportation shall furnish a statement showing the amount of fees due.

History: En. Sec. 12, Ch. 206, L. 1963; amd. Sec. 2, Ch. 88, L. 1965; amd. Sec. 195, Ch. 316, L. 1974; amd. Sec. 1, Ch. 144, L. 1977; R.C.M. 1947, 53-712; amd. Sec. 2, Ch. 36, L. 1981; amd. Sec. 2, Ch. 414, L. 1983; amd. Sec. 5, Ch. 42, L. 1995; amd. Sec. 5, Ch. 88, L. 1995; amd. Sec. 3, Ch. 72, L. 1997; amd. Sec. 83, Ch. 51, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 51 in (6)(a) and (6)(b) at beginning deleted "Subject to section 4, Chapter 72, Laws of 1997"; and made minor changes in style. Amendment effective March 15, 1999.

Cross-References

Highway revenue nondiversion, Art. VIII, sec. 6, Mont. Const.

Application for registration, 61-3-303.

61-3-722. Registration and identification of proportionally registered vehicles — fees — effect of registration. (1) The department shall register each proportionally registered vehicle and issue a license plate or plates, a distinctive sticker, or other suitable identification device for each vehicle described in the application upon payment of the appropriate fees and property taxes, as provided by law, for the application and for the license plates, stickers, or devices issued. A fee of $2 must be paid for each license plate, each sticker, and each device issued for each proportionally registered vehicle. A fee of $5 must be paid for each vehicle receiving temporary registration as authorized by section 704 of the international registration plan of the American association of motor vehicle administrators, adopted in April 1988. A registration card must be issued for each proportionally registered vehicle. The registration card must, in addition to other information required by chapter 3, show the number of the license, sticker, or other device issued for the proportionally registered vehicle and must be carried in the vehicle at all times.

(2) Fleet vehicles registered and identified as fleet vehicles are considered fully licensed and registered in this state for any type of movement or operation, except that, in those instances in which a grant of authority is required for intrastate movement or operation, the vehicle may not be operated in intrastate commerce in this state unless the owner has been granted intrastate authority by the public service commission and unless the vehicle is being operated in conformity with that authority.

History: En. Sec. 13, Ch. 206, L. 1963; amd. Sec. 3, Ch. 88, L. 1965; amd. Sec. 196, Ch. 316, L. 1974; R.C.M. 1947, 53-713; amd. Sec. 1, Ch. 32, L. 1993; amd. Sec. 6, Ch. 42, L. 1995.

61-3-723. Proportional registration not applicable in a single jurisdiction. The right to the privilege and benefits of proportional registration of fleet vehicles extended by 61-3-711 through 61-3-733, or by any contract, agreement, arrangement, or declaration made under the authority thereof, shall be subject to the condition that each fleet vehicle proportionally registered under the authority of 61-3-711 through 61-3-733 shall also be proportionally or otherwise properly registered in at least one other jurisdiction during the period for which it is proportionally registered in this state.

History: En. Sec. 14, Ch. 206, L. 1963; R.C.M. 1947, 53-714.

61-3-724. Registration of additional fleet vehicles. Vehicles acquired by the owner after the commencement of the registration period and subsequently added to a proportionally registered fleet must be proportionally registered by applying the mileage percentage used in the original application for the fleet for the registration period to the regular registration fees due with respect to the vehicle for the remainder of the registration period.

History: En. Sec. 15, Ch. 206, L. 1963; R.C.M. 1947, 53-715; amd. Sec. 7, Ch. 42, L. 1995.

61-3-725. Withdrawal of fleet vehicles — procedure, credits, and accounting. (1) If a vehicle is withdrawn from a proportionally registered fleet during the period for which it is registered, the owner of the fleet shall notify the department of transportation of that fact on forms prescribed by the department. The department may require the owner to surrender proportional registration cards and other identification devices that have been issued with respect to that vehicle. If a vehicle is permanently withdrawn from a proportionally registered fleet because it has been destroyed, sold, or otherwise completely removed from the service of the registrant, the unused portion of the gross vehicle weight fees paid with respect to that vehicle must be credited to the proportional registration account of the owner. This unused portion equals the amount paid with respect to the vehicle when it was first proportionally registered in the registration period, reduced by one-twelfth of the total annual gross vehicle weight fee of the vehicle for each calendar month and fraction of a month elapsing between the first day of the month of the current period in which the vehicle was registered and the date the notice of withdrawal is received by the department. This credit must be applied against liability for additional fees due during the registration period or for additional fees due upon audit under 61-3-728. If a credit is less than $5, it may not be made or entered. In no event may the amount be credited against fees other than those for the registration period, nor may any amount be subject to refund.

(2) If the owner replaces a vehicle withdrawn from the fleet at the same time as the withdrawal and the replacement vehicle is of the same or of a lesser weight category than the one withdrawn, the gross vehicle weight fees are transferable to the replacement vehicle. If the transfer is to a smaller vehicle, credit may not be given or entered.

History: En. Sec. 16, Ch. 206, L. 1963; amd. Sec. 197, Ch. 316, L. 1974; R.C.M. 1947, 53-716; amd. Sec. 3, Ch. 36, L. 1981; amd. Sec. 3, Ch. 414, L. 1983; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 8, Ch. 42, L. 1995.

Cross-References

GVW license transferable, 61-10-224.

61-3-726. New fleet — estimated mileage. The initial application for proportional registration of a fleet shall state the mileage data with respect to the fleet for the preceding year in this and other jurisdictions. If operations were not conducted with this fleet during the preceding year, the application shall contain a full statement of the proposed method of operation and estimates of annual mileage in this state and other jurisdictions. The department shall determine the in-state and total fleet miles to be used in computing the fee payment for the fleet. The department may evaluate and adjust the estimate in the application if it is not satisfied as to the correctness of the estimate.

History: En. Sec. 17, Ch. 206, L. 1963; amd. Sec. 198, Ch. 316, L. 1974; R.C.M. 1947, 53-717.

61-3-727. Fleet registration — denial when no reciprocity. The department may refuse to accept proportional registration applications for the registration of vehicles based in, or owned by residents of, another jurisdiction if the department finds that the other jurisdiction does not grant similar registration privileges to fleet vehicles based in or owned by residents of this state.

History: En. Sec. 18, Ch. 206, L. 1963; amd. Sec. 199, Ch. 316, L. 1974; R.C.M. 1947, 53-718.

61-3-728. Preservation of proportional registration records. An owner whose application for proportional registration has been accepted shall preserve the records on which the application is based for a period of 4 years following the year or period upon which the application is based. Upon request of the department, the owner shall make these records available to the department for audit as to accuracy of computations and payments or pay the reasonable costs of an audit at the owner's home office by an appointed representative of the department. The department may make arrangements with agencies of other jurisdictions administering motor vehicle registration laws for joint audits of the owner.

History: En. Sec. 19, Ch. 206, L. 1963; amd. Sec. 200, Ch. 316, L. 1974; R.C.M. 1947, 53-719.

61-3-729. Relation to other state laws. The provisions of 61-3-711 through 61-3-733 shall constitute complete authority for the registration of fleet vehicles upon a proportional registration basis without reference to or application of any other statutes of this state except as in this section expressly provided.

History: En. Sec. 20, Ch. 206, L. 1963; R.C.M. 1947, 53-720.

Cross-References

Special fuel user registration card, 15-70-302.

61-3-730. Suspension of reciprocity benefits. The department may suspend or cancel the exemptions, benefits, or privileges granted under 61-3-711 through 61-3-733 to a person who violates any of the conditions or terms of the agreements, arrangements, or declarations or violates the laws of this state relating to motor vehicles, or rules lawfully adopted thereunder.

History: En. Sec. 21, Ch. 206, L. 1963; amd. Sec. 201, Ch. 316, L. 1974; R.C.M. 1947, 53-721; amd. Sec. 4, Ch. 36, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Traffic regulation, Title 61, ch. 8.

Size — weight — load, Title 61, ch. 10.

61-3-731. Agreements to be written, filed, and available for distribution. All agreements, arrangements, or declarations, or amendments thereto, shall be in writing and shall be filed with the department, and the department shall provide copies for public distribution upon request.

History: En. Sec. 22, Ch. 206, L. 1963; amd. Sec. 202, Ch. 316, L. 1974; R.C.M. 1947, 53-722.

Cross-References

Public records generally, Title 2, ch. 6, part 1.

Duties of Department, 60-2-202.

61-3-732. Continued validity of existing reciprocity agreements. All reciprocity and proportional registration agreements, arrangements, and declarations relating to vehicles in force and effect as of March 7, 1963, shall continue in force and effect until specifically amended or revoked as provided by law or by such agreements or arrangements.

History: En. Sec. 23, Ch. 206, L. 1963; R.C.M. 1947, 53-723.

61-3-733. Law supplemental to motor vehicle registration law. Sections 61-3-711 through 61-3-732 are supplemental to the motor vehicle registration law of this state.

History: En. Sec. 24, Ch. 206, L. 1963; amd. Sec. 203, Ch. 316, L. 1974; R.C.M. 1947, 53-724.

61-3-734 and 61-3-735 reserved.

61-3-736. Assessment of proportionally registered interstate motor vehicle fleets — payment of tax or fee in lieu of tax required for registration. (1) (a) Except as provided in subsection (2), the department of transportation shall determine the fee for the purpose of imposing the fee in lieu of tax as provided in 61-3-528 and 61-3-529 on buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, in interstate motor vehicle fleets that are proportionally registered under the provisions of 61-3-711 through 61-3-733. The fee must be apportioned on the ratio of total miles traveled to in-state miles traveled as prescribed by 61-3-721. The fee in lieu of tax on interstate motor vehicle fleets is imposed upon application for proportional registration and must be paid by the persons who own or claim the fleet or in whose possession or control the fleet is at the time of the application.

(b) With respect to an original application for a fleet that has a situs in Montana for the purpose of the fee in lieu of tax under this part or any other provision of the laws of Montana, the fee in lieu of tax on fleet vehicles must be prorated according to the ratio that the remaining number of months in the year bears to the total number of months in the year.

(2) For the purpose of taxation, the department of transportation shall assess light vehicles, as defined in 61-1-139, that are part of an interstate motor vehicle fleet as follows:

(a) The value of each vehicle is determined in the same manner as provided in 61-3-503.

(b) The value determined under subsection (2)(a) multiplied by the percent of miles traveled in Montana, as prescribed by 61-3-721, is the market value.

(c) The sum of the market value of all vehicles subject to tax under this subsection (2) multiplied by 2% is the tax for the entire fleet.

(d) With respect to an original application for a fleet that has a situs in Montana for the purpose of taxation under this part or any other provision of the laws of Montana, the taxes on taxable vehicles are determined as provided in subsection (2)(b).

(e) Vehicles taxed as part of a fleet under this subsection (2) are not subject to the local option tax imposed under 61-3-537.

(3) With respect to a renewal application for a fleet, taxable vehicles are assessed and taxed for a full year and for all other vehicles the fee in lieu of tax is imposed for a full year.

(4) Vehicles contained in a fleet for which current taxes or fees, or both, have been assessed and paid may not be assessed or charged fees under this section upon presentation to the department of proof of payment of taxes, fees, or both for the current registration year. The payment of fleet vehicle taxes, fees in lieu of tax, and license fees is a condition precedent to proportional registration or reregistration of an interstate motor vehicle fleet.

(5) All taxes and fees collected on motor vehicle fleets under this chapter must be deposited and distributed as provided in 61-3-738.

History: En. Sec. 34, Ch. 496, L. 1997.

61-3-737. Situs in state of proportionally registered fleets — collection of taxes and fees. (1) For the purposes of this part, any vehicle previously registered or that has had application for registration made under the provisions of 61-3-711 through 61-3-733 has a situs in Montana for the purposes of taxation or the fee in lieu of tax.

(2) The department of transportation shall collect the fleet vehicle taxes, the fees in lieu of tax, and license fees prescribed in this part.

History: En. Sec. 35, Ch. 496, L. 1997.

61-3-738. Deposit and distribution of taxes and fees on proportionally registered fleets. The taxes, fees in lieu of tax, and license fees collected under this part must be deposited with the state treasurer for distribution to the general fund of each county on the following basis:

(1) for fleet vehicle taxes and fees in lieu of tax, according to the ratio of the taxable valuation of each county to the total state taxable valuation; and

(2) for fleet vehicle license fees, according to the ratio of vehicle license fees, other than fees derived from interstate motor vehicle fleets, collected in each county to the sum of all fleet vehicle fees collected in all the counties.

History: En. Sec. 36, Ch. 496, L. 1997.

CHAPTER 4

SALES AND DISTRIBUTION OF MOTOR VEHICLES

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61-4-531. Nondelegable.
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Chapter Cross-References

U.C.C. — sales, Title 30, ch. 2.
Sales, Title 30, ch. 11.
Retail installment sales, Title 31, ch. 1, part 2.

Part 1
Dealers

Part Cross-References

Canceled dealership contracts — repurchase requirements, Title 30, ch. 11, part 7.
Dealer defined, 61-1-314.

61-4-101. Dealer's license — types of licenses and terms — plates — bonds — zoning. (1) Except as provided in 61-4-125, a person may not engage in the business of buying, selling, exchanging, accepting on consignment, or acting as a broker of a new motor vehicle or used motor vehicle, new or used recreational vehicle, trailer, motorcycle, quadricycle, or special mobile equipment for which a certificate of ownership has not been issued and that is not registered in the person's name, unless the person is the holder of a dealer's license issued by the department under this part.

(2) (a) The department is authorized to issue a dealer's license for one or more specified vehicle types to any person that it determines is qualified to hold a license under the provisions of this section. A dealer's license may be issued for, and restricted to, one or more of the following vehicle types:

(i) new motor vehicle;
(ii) used motor vehicle;
(iii) new recreational vehicle;

(iv) used recreational vehicle;

(v) trailer of any size, or special mobile equipment; or

(vi) motorcycle or quadricycle.

(b) For each type of dealer's license authorized, the department shall design and issue dealer and demonstrator plates as provided in 61-4-102 and 61-4-129.

(c) With the exception of a licensed new motor vehicle dealer, a dealer licensed for a particular type of vehicle may sell, trade, or accept on consignment only vehicles of the type for which the license is authorized, unless the dealer's license specifically refers to more than one vehicle type, such as a motorcycle or quadricycle license. A new motor vehicle dealer is authorized to sell, trade, or accept on consignment new motor vehicles or used motor vehicles.

(d) Regardless of vehicle type, a dealer's license issued by the department has a term of 1 calendar year, commencing on or after January 1 in the year of issue and expiring on December 31 of the same year.

(3) (a) An applicant for a dealer's license shall submit a written application for a dealer's license to the department, specifying the type or types of dealer's license sought. The application must be signed by the applicant and contain a verification by the applicant, under penalty of law, that the information contained in the application is true and correct. Any information provided in the license application process is subject to independent verification by the department or a duly authorized representative of the department.

(b) After examining a license application and conducting investigation necessary to verify the information contained in the application and if the department is satisfied that the applicant qualifies for the issuance of a license under the provisions of this chapter, the department may issue the license. The department may refuse, after examination and investigation, to issue a license to an applicant who is not qualified for licensure or whose prior financial or other activities or criminal record, as determined by the department:

(i) pose a threat to the effective regulation of dealers, wholesalers, or auto auctions;

(ii) pose a threat to the public interest of the state; or

(iii) create a danger of illegal or deceptive practices being used in the conduct of the proposed dealership, wholesaler, or auto auction.

(4) To be qualified for licensure as a dealer, an applicant shall provide to the department the following:

(a) the name under which the applicant intends to conduct business and the name, address, date of birth, and social security number of any person who possesses or will possess an ownership interest in the business for which the license is sought. If the applicant is a corporation, the personal information required in this subsection (4)(a) must be provided for each corporate officer and the person designated by the corporation to manage or oversee the dealership.

(b) for each person subject to the provisions of subsection (4)(a), whether the person has:

(i) an ownership interest in a vehicle dealership or a wholesaler business in Montana or another jurisdiction and if so, the name and address of each dealership or wholesaler; and

(ii) been found guilty of, or pleaded guilty to, a felony in this or any other jurisdiction and if so, provide a summary of the conduct resulting in the felony charge, including the dates of the conduct and any court proceedings pertaining to the conduct and the name and address of any court in which the matter was heard;

(c) the name, address, and telephone number of the insurance carrier from whom the applicant has acquired garage keepers liability insurance and the name, address, and telephone number of the local insurance agent for the carrier and the applicant's policy number. The insurance must cover any vehicle bearing dealer or demonstrator license plates that is offered for demonstration or loan to, or otherwise operated by, a customer in the regular course of the applicant's business;

(d) the geographic location of the physical lot or lots upon which vehicles will be displayed for sale and a permanent nonresidential building will be maintained to store the actual physical or electronic records resulting from the purchase, sale, trade, or consignment of vehicles for which licensure is sought. An applicant may use more than one location to display vehicles for sale, provided the maximum distance between each display lot does not exceed 200 feet and the distance between a display lot and the building in which vehicle sales records are stored does not exceed 1,000 feet.

(e) for each geographic location specified in the application, evidence of the applicant's compliance with applicable local land use planning, zoning, and business permitting requirements, if any. Evidence of compliance may be documented by means of a written verification of compliance signed by the authorized representative of the local land use planning or zoning board or the local business permitting agency.

(f) a diagram or plat showing the geographic location, lot dimensions, and building and sign placement for the applicant's proposed established place of business, along with two or more photographs of the geographic location, building premises, and sign, as prescribed by the department;

(g) a certification by the applicant that the applicant is a bona fide dealer in new motor vehicles, used motor vehicles, used recreational vehicles, trailers, motorcycles, quadricycles, or special mobile equipment;

(h) if the applicant is seeking a new motor vehicle dealer's license:

(i) the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement and the name and make of all motor vehicles to be handled by the applicant;

(ii) the geographic location or locations, specified in writing, upon which the applicant will provide and maintain a permanent building to display and sell new motor vehicles and offer and maintain a bona fide service department for the repair, service, and maintenance of the motor vehicles;

(iii) otherwise meet the requirements of part 2 of this chapter; and

(iv) if the applicant is applying for a new recreational vehicle dealer's license, certification that the person is recognized by a manufacturer, importer, or distributor as a dealer in new recreational vehicles.

(5) If an applicant for a new motor vehicle or used motor vehicle, new or used recreational vehicle, or trailer dealer's license wants to maintain more than one established place of business, the applicant shall file a separate license

application for each proposed established place of business and otherwise qualify for licensure at each place separately.

(6) Each application under this section must be accompanied by an application fee of $5 and one or more of the following license fees based on the type of dealer's license being sought:

(a) $25 for a new motor vehicle dealer's license;

(b) $25 for a used motor vehicle dealer's license;

(c) $25 for a new or used recreational vehicle dealer's license; or

(d) $25 for a motorcycle or trailer dealer's license.

(7) The applicant for a dealer's license shall also file with the application a bond of $25,000 for a license as a new motor vehicle dealer, a used motor vehicle dealer, a new or used recreational vehicle dealer, or a trailer dealer. Applicants for a motorcycle dealer's license shall file a bond in the sum of $10,000. All bonds must be conditioned that the applicant shall conduct the business in accordance with the requirements of the law. The bond may extend to any other type of dealer license issued to the applicant at the same geographic location, provided that all types of licenses are indicated on the face of the bond. All bonds must be approved by the department, must be filed in its office, and must be renewed annually.

History: En. Subd. 5, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.4, R.C.M. 1935; amd. Sec. 2, Ch. 72, L. 1937; amd. Sec. 2, Ch. 245, L. 1955; amd. Sec. 3, Ch. 256, L. 1965; amd. Sec. 1, Ch. 354, L. 1969; amd. Sec. 2, Ch. 226, L. 1971; amd. Sec. 2, Ch. 244, L. 1971; amd. Sec. 1, Ch. 535, L. 1977; R.C.M. 1947, 53-118(part); amd. Sec. 1, Ch. 73, L. 1979; amd. Sec. 47, Ch. 421, L. 1979; amd. Sec. 2, Ch. 443, L. 1981; amd. Sec. 1, Ch. 282, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 27, Ch. 516, L. 1985; amd. Sec. 1, Ch. 179, L. 1989; amd. Sec. 1, Ch. 523, L. 1989; amd. Sec. 2, Ch. 383, L. 1991; amd. Sec. 14, Ch. 724, L. 1991; amd. Sec. 9, Ch. 482, L. 1993; amd. Sec. 1, Ch. 220, L. 1997; amd. Sec. 1, Ch. 221, L. 1997; amd. Sec. 84, Ch. 51, L. 1999; amd. Sec. 21, Ch. 409, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 51 in (2)(c) near middle of second sentence after "business" substituted "shall" for "may". Amendment effective March 15, 1999. The amendment by Ch. 409 rendered the amendment by Ch. 51 void.

Chapter 409 substituted current text concerning dealer's license, types of licenses and terms, plates, bonds, and zoning for former text that read: "(1) (a) A verified application for licensure as a dealer or wholesaler must be filed, by mail or otherwise, in the office of the department by each person, firm, corporation, or association that, for commission or profit, engages in:

(i) the business of buying, selling, exchanging, taking for consignment, or acting as a broker of new motor vehicles, recreational vehicles, used motor vehicles, trailers (except trailers having an unloaded weight of less than 500 pounds), semitrailers, mobile homes, or special mobile equipment as defined in 61-1-104; or

(ii) business as a wholesaler as defined in 61-1-319.

(b) A licensed real estate broker or agent lawfully buying, selling, exchanging, taking for consignment, or acting as a broker of mobile homes is exempt from licensure under this section.

(c) The sale of more than three motor vehicles or the offering for sale of more than three motor vehicles, if the motor vehicles are not titled in the seller's name, in any calendar year is prima facie evidence that a person is engaged in the business of dealing motor vehicles. Licensed wholesalers do not have the privilege of the use of dealer license plates as provided in subsection (2)(b) but are authorized to display and use demonstrator plates under the provisions of 61-4-102(2)(a)(ii).

(d) Each license application and all of the information contained in it must be verified by the department or an authorized representative of the department on a form to be furnished by the department for that purpose and must contain the information required. Each application must be accompanied by the license fee specified in 61-4-102. A dealer's or wholesaler's license must be renewed and paid for annually, and an application for relicensure must be filed not later than January 1 of each year. If an application for renewal of a license has been received by the department before the expiration of the license, the licensee may operate the business and display dealer or demonstrator plates under the expired license between January 1 and February 15 following expiration.

(2) To qualify for licensure and the issuance and use of "D", "UD", "RV", "DTR", or "MCD" plates as provided in this subsection, the applicant shall furnish the following information and qualify under the following provisions:

(a) To qualify as a new motor vehicle dealer and for the use of "D" plates, the applicant shall:

(i) state the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock of motor vehicles is displayed;

(ii) state the name, address, date of birth, and social security number of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;

(iii) identify other dealerships owned by the applicant, identify all persons in Montana or in another state having an interest in another dealership owned by the applicant, and disclose whether the applicant or other person with interest in a dealership owned by the applicant has been convicted of a felony;

(iv) certify that the applicant has acquired and shall maintain motor vehicle liability insurance, pursuant to 61-6-301, for any vehicle offered for demonstration or loan to a customer;

(v) state the name and make of all motor vehicles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement;

(vi) execute a certificate to the effect that the applicant has a permanent building for the display and sale of new motor vehicles at the location of the premises where sales are conducted;

(vii) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of motor vehicles; and

(viii) execute a certificate to the effect that the applicant is a bona fide dealer in new motor vehicles and that the dealer is recognized by a manufacturer, importer, or distributor as a dealer in new motor vehicles.

(b) To qualify as a used motor vehicle dealer and for the use of "UD" plates; as a recreational vehicle dealer and for the use of "RV" plates; as a trailer, semitrailer, or special mobile equipment dealer and for the use of "DTR" plates; as a motorcycle or quadricycle dealer and for the use of "MCD" plates; or as a wholesaler and for the use of demonstrator plates, the applicant shall, in addition to the matters set forth in subsections (2)(a)(i) through (2)(a)(iv), provide:

(i) a statement that the:

(A) applicant has an established place of business consisting of one or more lots located within 200 feet of each other upon which motor vehicles may be displayed and a permanent nonresidential building on or within 1,000 feet of the lot or lots where records are kept and sales are made; or

(B) wholesaler applicant has an established place of business that includes a permanent nonresidential building or office where records are kept in order that those records may be inspected;

(ii) a certificate to the effect that the applicant is a bona fide dealer or wholesaler in used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, or quadricycles. An applicant for a recreational vehicle dealer license shall also indicate on the same certificate that the person is recognized by a manufacturer, importer, or distributor as a dealer in recreational vehicles.

(c) If two or more vehicle dealers or wholesaler businesses share a location, all records, office facilities, and inventory, if applicable, must be physically segregated and clearly identified. Each applicant's established place of business may display a sign that indicates the firm name and that vehicles are offered for sale. The letters of the sign must be clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.

(d) To qualify for a used motor vehicle dealer's or wholesaler's license, a person shall submit an annual application for that license and comply with the provisions of 61-4-102(5) in addition to fulfilling the requirements of subsection (2)(b).

(e) The provisions of subsection (2)(d) do not apply to an applicant who is licensed as a motor vehicle wrecking facility under the provisions of Title 75, chapter 10, part 5.

(3) (a) The applicant for a dealer's or wholesaler's license shall also file with the application a bond of $25,000 for a license as a new motor vehicle dealer, a used motor vehicle dealer, a recreational vehicle dealer, a trailer dealer, or a wholesaler. However, applicants for a license as a trailer dealer or a trailer wholesaler shall file the $25,000 surety bond only if special mobile equipment, commercial trailers and semitrailers exceeding 6,000 pounds maximum gross loaded weight, mobile homes, or house trailers are sold. All other

trailer dealer, motorcycle dealer, or wholesaler license applicants shall file a bond in the sum of $10,000. All bonds must be conditioned that the applicant shall conduct the business in accordance with the requirements of the law. The bond may extend to any other type of dealer license issued to the applicant at the same place of business, provided that all types of licenses are indicated on the face of the bond. All bonds must run to the state of Montana, must be approved by the department, must be filed in its office, and must be renewed annually.

(b) A person who suffers loss or damage due to the unlawful conduct of a dealer or wholesaler licensed under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond. The judgment must determine a specific loss or damage amount and conclude that the licensee's unlawful operation caused the loss or damage before payment on the bond is required". Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

Cross-References

Off-highway vehicle dealer registration certificate, 23-2-818.

Suretyship, Title 28, ch. 11, part 4.

Highway patrol — general duties of Department of Justice, 44-1-102.

Recreational vehicle defined, 61-1-132.

Duties of Department of Justice — records, 61-3-101.

Exemptions of vehicles not capable of operation on highways, 61-3-432.

Registration — penalties — enforcement, 61-3-602.

61-4-102. Dealer's license numbers — assignment, numbering, and limitation of dealer plates — restriction of use — fees. (1) Upon the licensing of a dealer, the department shall assign to the dealer a distinctive serial license number as a dealer and furnish the dealer with one or more sets of numbered dealer plates in accordance with the provisions of this section.

(2) (a) Dealer plates designed by the department must be similar to the numbered plates furnished to owners of motor vehicles under 61-3-332, but they must bear:

(i) the license number assigned to the dealer;

(ii) an abbreviation for the vehicle type of the dealer's license issued, as follows:

(A) the letter "D" for a new motor vehicle dealer;

(B) the letters "UD" for a used motor vehicle dealer; or

(C) the letters "RV" for a new or used recreational vehicle dealer; and

(iii) the actual number of sets of dealer plates issued to the dealer.

(b) Dealer plates may not be issued to a motorcycle or trailer dealer or a wholesaler.

(3) Dealer plates must contain the prefix of the county in which the dealer's established place of business is located, followed by the dealer's license type abbreviation, the dealer's license number, and the number of sets of dealer plates issued to that dealer. For example, new motor vehicle dealer number 4 in Lewis and Clark County would be numbered 5D-4, and if the dealer were issued three sets of dealer plates, they would be numbered consecutively as follows, 5D-4-1, 5D-4-2, and 5D-4-3.

(4) (a) In addition to the fees required under the provisions of 61-4-101 and 61-4-124, an applicant for a dealer's license shall pay an annual fee of $25, for each set of numbered dealer plates requested and issued.

(b) The number of dealer plates that may be issued to a dealer must be determined as follows:

(i) a dealer is entitled to one set of dealer plates upon the issuance of an original license or a renewed license;

(ii) an applicant qualified for a license renewal is entitled to additional sets of numbered plates based on the following formula:

(A) 5% of the first 100 vehicle sales for the previous year; plus

(B) 3% of the next 100 vehicle sales for the previous year; plus

(C) 2% of vehicle sales in excess of 200 for the previous year; and

(iii) a dealer is entitled to additional sets of dealer plates during a license term as the dealer's sales incrementally meet or exceed the requirements of the formula established in subsection (4)(b)(ii). However, the aggregate number of sets of dealer plates issued to a dealer under this subsection (4)(b)(iii) may not exceed the combined number allowed under subsections (4)(b)(i) and (4)(b)(ii).

(5) (a) A dealer is authorized to use and display dealer plates on a motor vehicle held for bona fide sale by the dealer and that is operated by or under the control of the dealer, the dealer's spouse, officers, or employees.

(b) For purposes of this subsection (5):

(i) the term "officers" includes only the persons listed on the manufacturer's franchise agreement or the importer's distribution agreement and the term "employees" means persons upon whom the dealer has paid social security taxes as a full-time employee; and

(ii) the display of a Monroney label or a buyer's guide label, as required by 61-4-123(2), on a vehicle bearing dealer plates is prima facie evidence that the vehicle is offered for bona fide sale by the dealer.

(6) Dealer plates may not be used or displayed on vehicles used for hire, lease, or rental.

(7) (a) A dealer is accountable for each set of numbered dealer plates issued and shall file a quarterly report with the department certifying the disposition of each set of dealer plates assigned to the dealer and specifying the name, address, and occupation of the person primarily using each set of plates.

(b) A dealer who fails to submit an accountability report within 30 days of the end of the calendar quarter may be subject to the imposition of a civil penalty under 61-4-105.

(8) All numbered dealer plates expire on December 31 of the year of issue and are subject to renewal in accordance with the provisions of 61-4-124 and this section.

History: Ap. p. Subd. 5, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.4, R.C.M. 1935; amd. Sec. 2, Ch. 72, L. 1937; amd. Sec. 2, Ch. 245, L. 1955; amd. Sec. 3, Ch. 256, L. 1965; amd. Sec. 1, Ch. 354, L. 1969; amd. Sec. 2, Ch. 226, L. 1971; amd. Sec. 2, Ch. 244, L. 1971; amd. Sec. 1, Ch. 535, L. 1977; Sec. 53-118, R.C.M. 1947; Ap. p. Sec. 6, Ch. 75, L. 1917; amd. Sec. 2, Ch. 207, L. 1919; amd. Sec. 1, Ch. 199, L. 1921; re-en. Sec. 1760, R.C.M. 1921; amd. Sec. 1, Ch. 107, L. 1923; amd. Sec. 1, Ch. 88, L. 1927; amd. Sec. 1, Ch. 182, L. 1929; amd. Sec. 1, Ch. 103, L. 1933; amd. Sec. 1, Ch. 38, Ex. L. 1933; re-en. Sec. 1760, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1937; amd. Sec. 1, Ch. 125, L. 1939; amd. Sec. 2, Ch. 154, L. 1943; amd. Sec. 2, Ch. 200, L. 1945; amd. Sec. 1, Ch. 201, L. 1945; amd. Sec. 1, Ch. 221, L. 1951; amd. Sec. 1, Ch. 215, L. 1953; amd. Sec. 1, Ch. 41, L. 1955; amd. Sec. 228, Ch. 147, L. 1963; amd. Sec. 1, Ch. 178, L. 1963; amd. Sec. 30, Ch. 121, L. 1965; amd. Sec. 12-105, Ch. 197, L. 1965; amd. Sec. 4, Ch. 226, L. 1971; amd. Sec. 2, Ch. 243, L. 1977; Sec. 53-122, R.C.M. 1947; R.C.M. 1947, 53-118(part), 53-122(part); amd. Sec. 1, Ch. 228, L. 1979; amd. Sec. 3, Ch. 443, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 28, Ch. 516, L. 1985; amd. Sec. 3, Ch. 383, L. 1991; amd. Sec. 22, Ch. 409, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 409 substituted current text concerning distinctive license numbers and plates, types of plates, county where dealer is located, fee and number of dealer plates, use of dealer plates, accountability for dealer plates, and expiration of dealer plates for former text that read: "(1) Upon making such application, the applicant shall pay to the department, in addition to the fees required of dealers and wholesalers under the provisions of subsection (2), a fee of $5. Upon receipt of the application, fee, and bond, as provided above, the department shall examine the application, and may, prior to issuing a license, make individual investigation of the truth of the statements contained in the application. If the department is satisfied that the applicant qualifies for the issuance of a license under the provisions of this chapter, the department may issue the license. The department may refuse, after investigation, to issue a license to an applicant as allowed by law.

(2) Registration or license fees shall be paid upon registration or reregistration of dealers in motor vehicles, recreational vehicles, or trailers as follows:

(a) (i) all dealers in motor vehicles and recreational vehicles, a fee of $25, which shall entitle such dealer to one set of number plates, and $25 additional fee for each additional set of number plates, subject to the following limitations on the number of additional sets allowed a dealer:

(A) 5% of the first 100 vehicle sales for the previous year; plus

(B) 3% of the next 100 vehicle sales for the previous year; plus

(C) 2% of vehicle sales in excess of 200 for the previous year; and

(D) any additional sets upon a showing of good cause by the applicant dealer to the department.

(ii) in addition to the dealer plates allowed under subsection (2)(a)(i), a dealer who has purchased one or more sets of dealer plates or a licensed wholesaler is entitled to purchase demonstrator plates at a cost determined by the department to offset the cost of production. Demonstrator plates must be used in lieu of a dealer plate but only as set forth in subsection (6) and must be distinguished from dealer plates in a manner determined by the department. Wholesaler demonstrator plates must be distinguished from dealer demonstrator plates in a manner determined by the department.

(b) dealers in motorcycles, quadricycles, and trailers, including housetrailers, $45; and

(c) wholesalers in used motor vehicles, recreational vehicles, trailers (including semitrailers and special mobile equipment), and motorcycles (including quadricycles), $30.

(3) If a dealer or wholesaler is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year is one-half of the regular fee above given.

(4) A dealer or wholesaler in motor vehicles, recreational vehicles, or trailers who maintains more than one place of business or who maintains a branch establishment or establishments shall register and pay a registration or license fee for each place of business or establishment. A dealer may sell vehicles only from his licensed place of business unless the dealer notifies the department 10 days in advance, on a form prescribed by the department, of the opening date and location of an off-premises sale. Except for recreational vehicle dealers, an off-premises sale must be conducted within the city limits of the city of the dealer's licensed location or upon an adjacent off-premises site that is approved by the department and that is within the county of the dealer's licensed location. The sale may not exceed 10 consecutive business days, and a licensed dealer may not conduct more than 10 off-premises sales during any 1 calendar year.

(5) A new applicant for a used motor vehicle dealer or wholesaler license shall pay $300 to the department in addition to any other sums required by this section or other provisions of the law. An applicant for a renewal of a used motor vehicle dealer or wholesaler license shall certify under oath that he has sold more than five used motor vehicles during the preceding calendar year or pay an additional $300 before he may be licensed.

(6) Demonstrator plates provided for in subsection (2)(a)(ii) may be used only as follows:

(a) New and used motor vehicle or recreational vehicle demonstrator plates may be used:

(i) to demonstrate, for no more than 72 hours, an authorized vehicle held for sale, when operated by an individual holding a valid operator's license;

(ii) on authorized vehicles owned by the firm when operated by an officer or bona fide full-time employee of the dealer or wholesaler and used to transport the dealer's or wholesaler's own tools, parts, and equipment;

(iii) on authorized vehicles being tested for repair;

(iv) on authorized vehicles being moved to or from a dealer's place of business for sale;

(v) on authorized vehicles being moved to or from service and repair facilities before sale;

(vi) on authorized vehicles being moved to or from exhibitions within the state, provided any such exhibition does not exceed a period of 20 days.

(b) Mobile home and trailer dealer demonstrator plates may be used:

(i) on units hauled to or from the place of business of the manufacturer and the place of business of the dealer or to and from places of business of the dealer;

(ii) on mobile homes hauled to a customer's location for setup after sale;

(iii) on travel trailers held for sale to demonstrate the towing capability of the vehicle provided that a dated demonstration permit, valid for not more than 72 hours, is carried with the vehicle at all times;

(iv) on any motor vehicle owned by the dealer that is used only to move vehicles legally bearing mobile home and travel trailer dealer license plates of the dealer owning any such motor vehicle;

(v) on vehicles being moved to or from vehicle exhibitions within the state, provided any such exhibition does not exceed a period of 20 days". Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

Cross-References

Department of Justice — disposition of fees, 61-3-108.

Number plates, 61-3-332.

61-4-103. Repealed. Sec. 31, Ch. 409, L. 1999.

History: En. Subd. 5, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.4, R.C.M. 1935; amd. Sec. 2, Ch. 72, L. 1937; amd. Sec. 2, Ch. 245, L. 1955; amd. Sec. 3, Ch. 256, L. 1965; amd. Sec. 1, Ch. 354, L. 1969; amd. Sec. 2, Ch. 226, L. 1971; amd. Sec. 2, Ch. 244, L. 1971; amd. Sec. 1, Ch. 535, L. 1977; R.C.M. 1947, 53-118(part); amd. Sec. 4, Ch. 443, L. 1981; amd. Sec. 2, Ch. 282, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 29, Ch. 516, L. 1985; amd. Sec. 4, Ch. 383, L. 1991.

61-4-104. Record of purchase or sale. A dealer or wholesaler licensed under 61-4-101 shall keep a book or record of the purchases, sales or exchanges, or receipts for the purpose of sale of used vehicles and a description of the vehicles, together with the name and address of the seller, of the purchaser, and of the alleged owner or other person from whom each vehicle was purchased or received or to whom it was sold or delivered, as the case may be. The description in the case of motor vehicles must also include the vehicle identification number and engine number, if any, and must include a statement that a number has been obliterated, defaced, or changed if that has occurred. In the case of a trailer, semitrailer, or special mobile equipment, the record must include the manufacturer's number and other numbers or identification marks that appear on the trailer, semitrailer, or special mobile equipment. The dealer or wholesaler must also have a duly assigned certificate of ownership from the owner of the motor vehicle to the dealer or wholesaler from the time the motor vehicle is delivered to the dealer or wholesaler until it has been disposed of by the dealer or wholesaler. It is a violation of this part for a dealer or wholesaler to fail to take assignment of all certificates of ownership or manufacturer's certificates of origin for vehicles acquired by the licensee or to fail to assign the certificate of ownership or manufacturer's certificate of origin for vehicles sold. All records required to be kept in accordance with this section, in addition to the required retention of odometer disclosure information under 61-3-206(4), must be physically located and maintained within the building referred to in 61-4-101. An authorized representative of the department, upon presentation of the representative's credentials, may inspect and have access to and copy any records required under this chapter.

History: En. Subd. 5, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.4, R.C.M. 1935; amd. Sec. 2, Ch. 72, L. 1937; amd. Sec. 2, Ch. 245, L. 1955; amd. Sec. 3, Ch. 256, L. 1965; amd. Sec. 1, Ch. 354, L. 1969; amd. Sec. 2, Ch. 226, L. 1971; amd. Sec. 2, Ch. 244, L. 1971; amd. Sec. 1, Ch. 535, L. 1977; R.C.M. 1947, 53-118(4); amd. Sec. 48, Ch. 421, L. 1979; amd. Sec. 3, Ch. 282, L. 1985; amd. Sec. 13, Ch. 503, L. 1985; amd. Sec. 5, Ch. 383, L. 1991; amd. Sec. 2, Ch. 221, L. 1997; amd. Sec. 24, Ch. 409, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 409 at end of sixth sentence deleted reference to subsection (2)(b)(i) of 61-4-101. Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

Cross-References

Obscuring identity of machine, 45-6-326.

Certificates of ownership — transfer of interest — contents, 61-3-201, 61-3-202.

Penalty for altering identification number, 61-3-604.

61-4-105. Criminal penalty — civil penalty imposed by agency. (1) Any person violating the provisions of 61-3-501, 61-4-101, 61-4-102, 61-4-104, 61-4-120, or 61-4-123 through 61-4-126 is guilty of a misdemeanor and subject to a fine of not less than $250 and not more than $500. For the purposes of this section, every sale of a motor vehicle in violation of the provisions of 61-3-501, 61-4-101, 61-4-102, 61-4-104, 61-4-120, or 61-4-123 through 61-4-126 is a separate offense.

(2) In addition to all other penalties created by this part, the department is authorized to take appropriate enforcement action on its own initiative. Any person violating the provisions of 61-3-501, 61-4-101, 61-4-102, 61-4-104, 61-4-120, or 61-4-123 through 61-4-126 may be subject to administrative action, in accordance with the contested case procedures of Title 2, chapter 4, as follows:

(a) a civil penalty not to exceed $200 for each violation;

(b) suspension of the motor vehicle dealer, wholesaler, or auto auction license not to exceed 5 working days;

(c) revocation or denial of the motor vehicle dealer, wholesaler, or auto auction license; or

(d) any combination of subsections (2)(a) through (2)(c).

History: En. Subd. 5, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.4, R.C.M. 1935; amd. Sec. 2, Ch. 72, L. 1937; amd. Sec. 2, Ch. 245, L. 1955; amd. Sec. 3, Ch. 256, L. 1965; amd. Sec. 1, Ch. 354, L. 1969; amd. Sec. 2, Ch. 226, L. 1971; amd. Sec. 2, Ch. 244, L. 1971; amd. Sec. 1, Ch. 535, L. 1977; R.C.M. 1947, 53-118(part); amd. Sec. 4, Ch. 282, L. 1985; amd. Sec. 13, Ch. 503, L. 1985; amd. Sec. 3, Ch. 523, L. 1989; amd. Sec. 6, Ch. 383, L. 1991; amd. Sec. 25, Ch. 409, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 409 in two places in (1) and in (2) inserted reference to 61-3-501, deleted reference to 61-4-103, and inserted references to 61-4-123 through 61-4-126; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Recreational vehicle defined, 61-1-132.

Dealer defined, 61-1-314.

Duties of Department of Justice — records, 61-3-101.

Registration — penalties — enforcement, 61-3-602.

61-4-106. Transfer of license. A registered dealer or wholesaler who sells or disposes of his entire business to another person may have his certificate of registration transferred to the purchaser upon filing with the department a statement containing the name of the registered dealer or wholesaler, the number under which the business is registered, the name of the purchaser, and the location of the place of business so sold. Upon the filing of the statement, accompanied by a filing fee of $2, the department shall note upon the registration record of the dealer or wholesaler the change of ownership. A certificate of registration may not be transferred unless the entire business of the dealer or wholesaler holding the certificate of registration is sold and disposed of, and a certificate of registration may not be transferred to any person other than the purchasers of the business.

History: **En. Sec. 6, Ch. 75, L. 1917; amd. Sec. 2, Ch. 207, L. 1919; amd. Sec. 1, Ch. 199, L. 1921; re-en. Sec. 1760, R.C.M. 1921; amd. Sec. 1, Ch. 107, L. 1923; amd. Sec. 1, Ch. 88, L. 1927; amd. Sec. 1, Ch. 182, L. 1929; amd. Sec. 1, Ch. 103, L. 1933; amd. Sec. 1, Ch. 38, Ex. L. 1933; re-en. Sec. 1760, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1937; amd. Sec. 1, Ch. 125, L. 1939; amd. Sec. 2, Ch. 154, L. 1943; amd. Sec. 2, Ch. 200, L. 1945; amd. Sec. 1, Ch. 201, L. 1945; amd. Sec. 1, Ch. 221, L. 1951; amd. Sec. 1, Ch. 215, L. 1953; amd. Sec. 1, Ch. 41, L. 1955; amd. Sec. 228, Ch. 147, L. 1963; amd. Sec. 1, Ch. 178, L. 1963; amd. Sec. 30, Ch. 121, L. 1965; amd. Sec. 12-105, Ch. 197, L. 1965; amd. Sec. 4, Ch. 226, L. 1971; amd. Sec. 2, Ch. 243, L. 1977; R.C.M. 1947, 53-122(part); amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 7, Ch. 383, L. 1991.**

Cross-References

Duties of Department of Justice — records, 61-3-101.

Registration — exemptions of vehicles not capable of operation on highways, 61-3-432.

61-4-107. Cease and desist order. (1) When the department has reasonable cause to believe, from information furnished to it or from an investigation made by it, that a person is engaged in any business regulated by this part without being licensed as required, it shall immediately issue and serve upon the person, by certified mail, a cease and desist order requiring the person to cease and desist from further engaging in that business. If the person fails to comply with the order, the department shall file an action in the district court of Lewis and Clark County to restrain and enjoin the person from engaging in the business. The court shall proceed in the action as in other actions for injunctions.

(2) The sale of more than three motor vehicles or the offering for sale of more than three motor vehicles, if the certificates of ownership are not held in the offeror's name, in any calendar year is prima facie evidence that the offeror is engaged in the business of dealing motor vehicles and must be licensed under this chapter.

(3) When the department has reasonable cause to believe, from an investigation made by it or information furnished to it by a law enforcement officer, that a dealer or wholesaler has been improperly licensed, has used a dealer's license in a manner other than as authorized in this title, has provided a material misstatement of fact in an application for a license, is not qualified as a dealer or wholesaler under the requirements of this title, or has engaged in criminal conduct that renders the dealer or wholesaler unfit for licensure, the department may revoke the dealer's or wholesaler's license.

History: **En. Sec. 1, Ch. 49, L. 1989; amd. Sec. 26, Ch. 409, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 409 inserted (2) concerning evidence of business of dealing motor vehicles; inserted (3) concerning improper licensure; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

61-4-108. Exemptions. (1) This part does not require licensure of, or restrict or prohibit a financial institution, as defined in 32-6-103:

(a) in the selling of collateral repossessed on default of a loan made by the financial institution;

(b) in the conduct of a motor vehicle sales promotion in affiliation with one or more licensed dealers; or

(c) in the conduct of a motor vehicle sales promotion in affiliation with a person regularly engaged in a bona fide vehicle rental business if the purpose of the sale is to dispose of used motor vehicles used in the rental business.

(2) This part does not require licensure of an auctioneer whose business consists primarily of the sale of personal property other than motor vehicles.

(3) This part does not require licensure of a licensed real estate broker or agent lawfully buying, selling, exchanging, taking on consignment, or acting as a broker of mobile homes.

History: En. Sec. 2, Ch. 523, L. 1989; amd. Sec. 27, Ch. 409, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 409 inserted (3) concerning real estate brokers and agents. Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

61-4-109 and 61-4-110 reserved.

61-4-111. Used motor vehicles — transfer to and from dealers. (1) A licensed dealer, broker, or wholesaler who intends to resell a used motor vehicle and who operates the vehicle only for demonstration purposes:

(a) is exempt from registration under 61-3-201(2) when applying for a certificate of ownership; and

(b) may transfer or receive ownership of a motor vehicle by use of a dealer reassignment section on a certificate of ownership; however, when the allotted number of dealer reassignment sections on a certificate of ownership has been completed, ownership of the vehicle may not be transferred until an application for a certificate of ownership has been submitted by the dealer to the department and a new certificate of ownership has been issued.

(2) Upon the transfer of a used motor vehicle to a person other than a licensed dealer, broker, or wholesaler, the following acts are required of the dealer on or before the times set forth in this subsection:

(a) Prior to delivery of the vehicle to the purchaser, the dealer shall issue and affix to the rear window of the vehicle a 20-day permit in a form to be prescribed by the department and containing the name and address of the purchaser, date of sale, name and address of the dealer, and a description of the vehicle, including its serial number. There must be imprinted on the permit in bold letters the following statement: "IT IS UNLAWFUL TO PLACE LICENSE PLATES UPON THIS VEHICLE UNTIL REGISTERED AT THE OFFICE OF THE COUNTY TREASURER". One copy of the permit must be delivered by the dealer to the county treasurer in the manner prescribed in subsection (2)(b), and a copy must be retained by the dealer for the dealer's file. It is unlawful for the dealer to issue more than one permit per vehicle sale.

(b) Within 4 working days following the date of delivery of the vehicle, the dealer shall forward to the county treasurer of the county where the purchaser resides the certificate of ownership and certificate of registration (if the certificates are then in the dealer's possession), with an application for registration executed by the new owner in accordance with the provisions of 61-3-322, and a copy of the permit affixed to the vehicle by the dealer. The department, upon receipt of the documents from the county treasurer, together with the conditional sales contract or other lien, if any, shall issue a new certificate of ownership and certificate of registration, together with a statement of any conditional sales contract, mortgage, or other lien as provided in 61-3-202. Transmission of the documents by the dealer to the county treasurer may be accomplished either by personal delivery or by first-class mail, in which event they are considered to have been delivered at the time of mailing.

(c) If the dealer is unable to forward the certificate of ownership or certificate of registration within the time set forth in subsection (2)(b) because the certificate is lost, is in the possession of third parties, or is in the process of reissuance in this state or elsewhere, the dealer shall comply in all other respects with the provisions of subsection (2)(b) and shall forward the missing document or documents to the county treasurer, either personally or by first-class mail, within 3 days after receipt.

(3) Upon compliance by the dealer with the requirements in this section, title to the motor vehicle is considered to have passed to the purchaser as of the date of the delivery of the vehicle to the purchaser by the dealer, and the dealer has no further liability or responsibility with respect to the processing of registration.

(4) For purposes of this section, "motor vehicle" includes a trailer as defined in 61-1-111.

History: En. Sec. 3, Ch. 138, L. 1971; amd. Sec 2, Ch. 399, L. 1977; R.C.M. 1947, 53-109.1; amd. Sec. 1, Ch. 118, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 2, Ch. 342, L. 1995.

Cross-References

Duties of County Treasurer, 7-6-2111.

New registration required for transferred vehicle, 61-3-317.

Expiration of registration on transfer of ownership of vehicle, 61-3-334.

Time for payment of fees, 61-10-222.

61-4-112. New motor vehicles — transfers by dealers. (1) When a motor vehicle dealer transfers a new motor vehicle to a purchaser or other recipient, the dealer shall:

(a) issue and affix a permit as prescribed in 61-4-111(2)(a) for transfers of used motor vehicles and retain a copy of the permit;

(b) within 4 working days following the date of delivery of the new motor vehicle, forward to the county treasurer of the county where the purchaser or recipient resides:

(i) one copy of the permit issued under subsection (1)(a);

(ii) an application for certificate of title with a notice of security interest, if any, executed by the purchaser or recipient; and

(iii) a statement of origin as prescribed in 61-3-502(8).

(2) Upon receipt from the county treasurer of the documents required under subsection (1), the department shall issue a certificate of ownership and certificate of registration, together with a statement of lien as provided in 61-3-202.

History: En. Sec. 4, Ch. 138, L. 1971; R.C.M. 1947, 53-109.2; amd. Sec. 1, Ch. 428, L. 1985; amd. Sec. 13, Ch. 503, L. 1985; amd. Sec. 5, Ch. 517, L. 1989; amd. Sec. 3, Ch. 342, L. 1995; amd. Sec. 55, Ch. 509, L. 1995.

Cross-References

Duties of County Treasurer, 7-6-2111.

Time for payment of fees, 61-10-222.

61-4-113. New motor vehicles towed into state to be labeled. (1) Any firm, person, corporation, or association or any of their employees offering for sale or carrying on the business of selling new motor vehicles in the state of Montana shall be required to prominently label any motor vehicle which has been driven under its own power, pushed, towed, or propelled by any other means to sufficiently identify it from other new vehicles that have not been driven, pushed, or towed and shall be required to furnish the purchaser of any such motor vehicle with a certificate, on a printed form to be furnished by the department upon request by such dealers, showing the actual number of miles the motor vehicle has been driven under its own power and the number of miles the vehicle has been pushed, towed, or otherwise propelled upon its own wheels. Any firm, person, corporation, or association or any of their employees who fails to prominently label and issue the certificate or who knowingly issue a certificate that is untrue and calculated to mislead the purchaser is guilty of a misdemeanor.

(2) The provisions of this section do not apply to motor vehicles during the period of time that such motor vehicles are used for bona fide demonstrating purposes.

History: En. Secs. 1, 2, Ch. 26, L. 1937; R.C.M. 1947, 53-301, 53-302; amd. Sec. 49, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

Permit and transit plates for new vehicles being transported by driveaway or towaway methods, 61-4-301.

61-4-114 through 61-4-118. Repealed. Sec. 6, Ch. 39, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

61-4-114. (1)En. Sec. 1, Ch. 209, L. 1971; Sec. 53-118.6, R.C.M. 1947; amd. and redes. 32-3315.1 by Sec. 168, Ch. 316, L. 1974; Sec. 32-3315.1, R.C.M. 1947; (2)En. Sec. 12, Ch. 219, L. 1951; amd. Sec. 1, Ch. 262, L. 1967; amd. Sec. 1, Ch. 46, L. 1973; Sec. 53-626, R.C.M. 1947; amd. and redes. 32-3319 by Sec. 183, Ch. 316, L. 1974; Sec. 32-3319, R.C.M. 1947; R.C.M. 1947, 32-3315.1, 32-3319(part); amd. Sec. 50, Ch. 421, L. 1979.

61-4-115. Ap. p. Sec. 2, Ch. 209, L. 1971; Sec. 53-118.7, R.C.M. 1947; amd. and redes. 32-3315.2 by Sec. 169, Ch. 316, L. 1974; Sec. 32-3315.2, R.C.M. 1947; Ap. p. Sec. 13, Ch. 219, L. 1951; Sec. 53-627, R.C.M. 1947; amd. and redes. 32-3320 by Sec. 184, Ch. 316, L. 1974; Sec. 32-3320, R.C.M. 1947; R.C.M. 1947, 32-3315.2, 32-3320(part).

61-4-116. En. Sec. 3, Ch. 209, L. 1971; Sec. 53-118.8, R.C.M. 1947; amd. and redes. 32-3315.3 by Sec. 170, Ch. 316, L. 1974; R.C.M. 1947, 32-3315.3.

61-4-117. En. Sec. 4, Ch. 209, L. 1971; Sec. 53-118.9, R.C.M. 1947; amd. and redes. 32-3315.4 by Sec. 171, Ch. 316, L. 1974; R.C.M. 1947, 32-3315.4.

61-4-118. En. Sec. 5, Ch. 209, L. 1971; Sec. 53-118.10, R.C.M. 1947; amd. and redes. 32-3315.5 by Sec. 172, Ch. 316, L. 1974; R.C.M. 1947, 32-3315.5.

61-4-119. Penalty. A person violating a provision of 61-4-111 or 61-4-112 is guilty of a misdemeanor and subject to a fine of not less than $250 and not more than $500. Every violation of 61-4-111 and 61-4-112 is considered a separate offense.

History: En. Sec. 2, Ch. 118, L. 1981; amd. Sec. 8, Ch. 383, L. 1991.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

61-4-120. Application for auto auction license — general regulations. (1) A person, firm, association, or corporation that takes possession of a motor vehicle owned by another person through consignment, bailment, or any other arrangement for the purpose of selling the motor vehicle to the highest bidder when all buyers are licensed motor vehicle dealers, wholesalers, or wrecking facilities shall file by mail or otherwise in the office of the department a verified application for licensure as an auto auction. The application must be made in the following manner:

(a) Each application and all of the information contained in it must be verified by the department or an authorized representative of the department on a form to be furnished by the department for that purpose. The application must provide the following information:

(i) the name in which the business is to be conducted and the location of premises, including street address, city, county, and state, where records are kept, sales are made, and motor vehicle stock is displayed as an established place of business that displays a sign indicating the firm name and that vehicles are offered for sale. The letters on the sign must be clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.

(ii) the name and address of all owners or persons having an interest in the business. In the case of a corporation, the names and addresses of the president and secretary are sufficient.

(iii) a statement that the applicant is authorized to auction used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, and quadricycles under one license. A licensed auto auction may not auction a new motor vehicle except when authorized by a new motor vehicle manufacturer, importer, distributor, or representative, for the purpose of conducting a closed-factory fleet sale to dispose of new motor vehicles by the franchisor (manufacturer, distributor, or importer) to franchisee purchasers when the purchasers are licensed new motor vehicle dealers purchasing new motor vehicle line-makes authorized by their respective franchise, sales, or distributor agreements. An auto auction licensed under the provisions of this section shall notify and update the department with current fleet sale agreements between the auto auction and franchisor. An auto auction may not conduct a factory fleet sale unless authorized or appointed by a franchisor licensed under part 2 of this chapter.

(b) Each application must be accompanied by a bond of $25,000 and must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually.

(2) An auto auction's license must be renewed and paid for annually to the department, and an application for relicensure must be filed by January 1 of each year. The fee required for each first-time applicant is $500 and for subsequent renewal applications is $100 each year. Upon receipt of a properly completed application, fee, and bond, the department shall issue the auto auction license and assign an auto auction license number for each applicant in a manner determined by the department. Auto auctions dealing in motor vehicles may sell only to licensed dealers and wholesalers.

(3) Auto auctions that are licensed under this section and that hold a current license number may issue temporary permits, which may be displayed and used by a buyer to operate an unregistered vehicle purchased from the auto auction. The temporary permit is valid for a period of 72 hours from the time

of purchase and may be used only for the purpose of driving or transporting a vehicle from the auction premises to the purchaser's established place of business or point of destination. Temporary permits must be on a form prescribed by the department and must contain the name, address, and license number of the purchaser, date of sale, name, address, license number, and authorized signature of the auto auction, and a description of the vehicle, including its serial number. The department shall collect a fee of $10 from the auto auction for each temporary permit, and the auto auction may charge a vehicle purchaser no more than $10 for the issuance of each permit to offset the cost of the permit. It is unlawful for the auto auction to issue more than one temporary permit per vehicle sale.

(4) A licensed auto auction may apply for and may be authorized by the department to purchase and use license plates of a type and amount approved by the department, upon payment of a fee to the department to offset the cost of production. Licensed auto auctions may use the license plates to transport inventory vehicles from a point of storage or a point of delivery in this state to the auto auction's place of business, for road testing authorized vehicles, or for moving vehicles for purposes of repairing, painting, upholstering, polishing, and related activities. One license plate is required to be conspicuously displayed on the rear of the vehicle. Auto auctions may appoint designated persons, partnerships, corporations, service stations, or repair garages to use the license plate only when conducting work for the auto auction involving repairing, painting, upholstering, polishing, or performing similar types of work upon a vehicle. Upon application for an auto auction license, the applicant, if requesting the license plates, shall submit a sworn affidavit on a form prescribed by the department, listing each authorized person designated by the auction to use the license plates. The auto auction is responsible for reporting any changes to the affidavit within 72 hours after the amendment has occurred. An auto auction licensed under the provisions of this section is liable for the proper use of the license plates, which may not be used for private purposes. The department may revoke an auto auction's 72-hour temporary permit and license plate privileges if an auction issues, authorizes the use of, or uses a temporary permit or the license plate in violation of the provisions of this section.

(5) (a) Each auto auction shall keep a book or record, in a form and manner subject to approval by the department, of the purchases, sales, or exchanges or the receipts for the purpose of sale of any motor vehicle, a properly completed copy of a temporary permit issued to a vehicle purchaser, the date of title transfer, and a description of the motor vehicle, together with the name and address of the seller, the purchaser, and the alleged owner or other person from whom the motor vehicle was purchased or received or to whom it was sold or delivered. The description in the case of a motor vehicle must include:

(i) the vehicle identification number and engine number, if any; and

(ii) a statement that a number has been obliterated, defaced, or changed, if it has.

(b) An auto auction licensed under this section shall validate the sale of a motor vehicle through its auction by stamping its name and license number upon the certificate of ownership at a location on the front or back of the certificate, at the margin in the assignment section as executed between the transferor and transferee. An auto auction's stamp must be legible and may not interfere with the information recorded on the certificate between the transferor and transferee. If the certificate of ownership lacks adequate space for the auto auction to place its stamp, the auction may provide the transferee a copy of the auction invoice bearing the:

(i) name and license number of the auction, along with an indication of the vehicle year, make, model, and identification number;

(ii) name, address, and signature of the transferor;

(iii) name, license number, and signature of the transferee; and

(iv) date the vehicle was sold through the auction.

(c) The invoice must be attached to the certificate of ownership and must be presented to the department with any application for title.

(d) An auto auction shall retain, for 5 years, odometer disclosure information, including the name of the owner on the date the auto auction took possession of the motor vehicle, the name of the buyer, the vehicle identification number, and the odometer reading on the date the auto auction took possession of the motor vehicle. The odometer information may be retained in any way that is systematically retrievable and is not required to be maintained on any special disclosure form. The information may be part of the auction receipt or invoice or be maintained as a portion of a computer database or manual file. An auto auction that executes a transfer of ownership as an agent on behalf of a seller or buyer is liable for providing an odometer disclosure statement for the seller or an odometer disclosure acknowledgment for the buyer under the provisions of 61-3-206.

History: En. Sec. 10, Ch. 383, L. 1991; amd. Sec. 74, Ch. 10, L. 1993; amd. Sec. 3, Ch. 221, L. 1997; amd. Sec. 28, Ch. 409, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 409 in (1)(b) deleted former second sentence that read: "A person who suffers loss or damage due to the unlawful conduct of an auto auction licensed under this section may proceed in the same manner as provided for licensed dealers and wholesalers in 61-4-101(3)(b)"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

Cross-References

Wholesaler, 61-1-319.

61-4-121. Twenty-day permit — limitation on issuance and transfer — violation — penalty. (1) (a) A dealer may not issue more than one 20-day permit under 61-4-111 or 61-4-112 per vehicle sale.

(b) A dealer may not transfer 20-day permits to another dealer unless the dealer:

(i) notifies the department within 3 days of the transfer;

(ii) identifies to the department the dealer to whom any permits have been transferred;

(iii) informs the department of the date of the transfer and the quantity and serial numbers of the transferred permits.

(2) A dealer who violates the provisions of subsection (1) is subject to revocation of the privilege to issue 20-day permits for a period of time determined by the department.

History: En. Sec. 11, Ch. 383, L. 1991; amd. Sec. 4, Ch. 221, L. 1997.

61-4-122. Compliance specialists as peace officers. (1) The department may designate and train civilian employees as compliance specialists within the motor vehicle division. Each compliance specialist is a peace officer whose jurisdiction is limited to enforcement of violations of Title 61, chapter 3, parts 1, 2, 3, 4, and 6, and chapter 4.

(2) As a peace officer, a trained compliance specialist may:

(a) issue citations and make arrests;

(b) issue summonses;

(c) accept bail;

(d) serve warrants of arrest;

(e) make reasonable inspections of a dealer's established place of business and vehicle inventory; and

(f) require production of documents relating to the sale, purchase, exchange, or consignment of any vehicle currently or previously in a dealer's inventory or displayed for sale by the dealer or relating to any obligation imposed on a dealer under this title.

(3) For purposes of this section, the term "dealer" includes a dealer of any vehicle type, a wholesaler, or an auto auction, subject to licensure by the department under this chapter.

History: **En. Sec. 4, Ch. 409, L. 1999.**

Compiler's Comments

Effective Date: Section 33(1), Ch. 409, L. 1999, provided that this section is effective on passage and approval. Approved April 21, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that subsections (1) through (3), (4)(b), (4)(c), and (5) of this section apply to license terms beginning after December 31, 1999.

Section 34(2), Ch. 409, L. 1999, provided that subsections (4)(a) and (4)(d) of this section do not apply to used motor vehicle dealers licensed by the department of justice on or before December 31, 1999.

61-4-123. Dealer requirements and restrictions. (1) A dealer may not offer for sale, trade, or consignment any vehicle type not authorized by the license issued to the dealer by the department or use a dealer or demonstrator plate on a vehicle of a type for which the dealer is not licensed.

(2) A dealer may not exhibit at the dealer's established place of business or any approved off-premises sale location, a vehicle for sale, trade, or consignment unless the Monroney label required for new motor vehicles pursuant to 15 U.S.C. 1232 or the buyer's guide label required for used motor vehicles pursuant to 16 CFR, part 455, is affixed to the side window of the vehicle or is conspicuously displayed within the vehicle in a fashion that is readily readable by a customer.

(3) A dealer may not sell vehicles from a geographic location other than that of the dealer's established place of business as listed on the dealer's license unless the dealer notifies the department 10 days in advance, on a form prescribed by the department, of the opening date and location of an off-premises sale. Except for recreational vehicle dealers, an off-premises sale must be conducted within the city limits of the city of the dealer's licensed location or upon an adjacent off-premises site that is approved by the department and that is within the county of the dealer's licensed location. The sale may not exceed 10 consecutive business days, and a licensed dealer may not conduct more than 10 off-premises sales during any 1 calendar year.

(4) If more than one dealer displays vehicles and maintains an established place of business at the same geographic location, each dealer shall ensure that all vehicle records, office facilities, and inventory, if applicable, are physically segregated from those of the other dealer and clearly identified and attributed to the appropriate dealer.

(5) A dealer shall install and maintain telephone service at the dealer's established place of business. The telephone service must be listed in the directory assistance that applies to the area in which the business is located.

(6) A dealer shall conspicuously post at the dealer's established place of business written notice indicating the regular and customary office hours maintained by the dealer.

(7) (a) It is the responsibility of the dealer to ensure that a lapse in required garage keepers legal liability insurance does not occur as a result of cancellation or termination of a previously certified policy.

(b) This subsection (7) does not relieve a dealer of the mandatory vehicle liability insurance obligation imposed under chapter 6 of this title.

(8) A dealer shall display at the dealer's established place of business at least one sign stating the name of the business and indicating that vehicles are offered for sale, trade, or consignment. The letters of the sign must be at least 6 inches in height and clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.

History: En. Sec. 5, Ch. 409, L. 1999.

Compiler's Comments

Effective Date: Section 33(2), Ch. 409, L. 1999, provided that this section is effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

61-4-124. License renewal — fee — dealer's license suspension. (1) On or before December 31 of each year, a dealer shall apply to the department for renewal of the dealer's license for an additional 1-year period.

(2) (a) To qualify for renewal, a dealer shall submit a completed application, in a form prescribed by the department, updating prior submitted information concerning owner identity, other ownership interest, felony conduct, garage keeper liability insurance, and surety bond filings, as originally required under 61-4-101, and providing any other relevant information requested by the department.

(b) The department may also require a renewal applicant to submit one or more current photographs of the dealer's established place of business or the signage for the business.

(c) If a dealer seeks to change the geographic location of the dealer's established place of business, the dealer shall also provide information concerning local land use planning, zoning, and business permitting compliance, if applicable, and a diagram or plat for the proposed location, consistent with the requirements of 61-4-101.

(3) Except as provided in subsection (4)(c), a license renewal application must be accompanied by a $5 application fee and one or more of the following license fees, depending on the type of license renewal being sought:

(a) $25 for a new motor vehicle, used motor vehicle, new recreational vehicle, or used recreational vehicle dealer's license; and

(b) $25 for a motorcycle or trailer dealer's license.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a used motor vehicle dealer seeking license renewal shall also certify, under penalty of law, to the retail sale of 12 or more used motor vehicles during the expiring license term. A used motor vehicle dealer licensed for less than a full calendar year in the expiring license term shall certify, under penalty of law, to the retail sale of an average of at least one used motor vehicle a calendar month or portion of a calendar month, for which the expiring license was in effect.

(b) The minimum retail sales requirements of this subsection (4) do not apply to a dealer seeking to renew a used motor vehicle dealer's license and either a new motor vehicle dealer's license or a new recreational vehicle dealer's license.

(c) (i) To qualify for renewal, a used motor vehicle dealer who is also a qualified tow truck operator, as defined in 61-8-903, shall certify, under penalty of law, to the retail sale of five or more used motor vehicles during the expiring license term or pay a fee of $25 in addition to the application and license fee required in subsection (3).

(ii) A renewal applicant licensed as a motor vehicle wrecking facility under Title 75, chapter 10, part 5, is exempt from the minimum retail sales requirements of subsection (4)(a), as well as the additional renewal or the lower minimum sales requirements of this subsection (4).

(iii) If a used motor vehicle dealer also qualified as a tow truck operator loses the status of a qualified tow truck operator under 61-8-903, the dealer's license may be retained for the remainder of the license term, but after the current term, the dealer is subject to the retail sales requirements of subsection (4)(a).

(iv) If a used motor vehicle dealer also licensed as a motor vehicle wrecking facility ceases to do business as a wrecking facility and surrenders the wrecking facility license to the department of environmental quality, the dealer's license may be retained for the remainder of the license term, but after the current term, the dealer is subject to the retail sales requirements of subsection (4)(a).

(d) A dealer who fails to meet the retail sales requirements for license renewal under subsection (4)(a) is not eligible for license renewal and may not submit an application for another used motor vehicle dealer's license or a wholesaler's license for a period of 12 months from the expiration of the dealer's most recent license term.

(5) A dealer whose completed renewal application is received by the department on or before December 31 of the expiring license term may, if necessary, continue dealership operations and display or use dealer or demonstrator plates under the expired license through February 15 of the following year.

History: En. Sec. 6, Ch. 409, L. 1999.

Compiler's Comments

Effective Date: Section 33(2), Ch. 409, L. 1999, provided that this section is effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

61-4-125. Wholesaler's license. (1) (a) The department is authorized to issue a wholesaler's license to any person that it determines is qualified to hold a license under the provisions of this section.

(b) A wholesaler is authorized to sell used motor vehicles, used recreational vehicles, trailers, motorcycles, quadricycles, or special mobile equipment. However, a wholesaler may sell a vehicle only to a dealer, an auto auction, or another wholesaler. Retail sale of vehicles by a wholesaler is not allowed.

(c) A wholesaler's license issued by the department has a term of 1 calendar year, commencing on or after January 1 in the year of issue and expiring on December 31 of the same year.

(d) The department shall design and issue wholesaler demonstrator plates of a similar sequence to demonstrator plates issued to dealers but that conspicuously display the term "wholesaler" or the abbreviation "W".

(2) To qualify for a wholesaler's license, an applicant shall submit a completed application, in a form prescribed by the department, that provides the following:

(a) the name under which the applicant intends to conduct business and the name, address, date of birth, and social security number of any person who possesses or will possess an ownership interest in the business for which the license is sought. If the applicant is a corporation, the personal information required in this subsection (2)(a) must be provided for each corporate officer and the person designated by the corporation to manage or oversee the dealership.

(b) for each person subject to the provisions of subsection (2)(a) whether the person has:

(i) an ownership interest in a vehicle dealership or wholesaler business in Montana or another jurisdiction and if so, the name and address of each dealership or wholesaler; and

(ii) been found guilty of, or pleaded guilty to, a felony in this or any other jurisdiction, and if so, provide a summary of the conduct giving rise to the felony charge, including the dates of the conduct and any judicial proceeding pertaining to the conduct, and the name and address of any court in which the matter was heard;

(c) the name, address, and telephone number of the insurance carrier from whom the applicant has acquired garage keepers liability insurance and the name, address, and telephone number of the local insurance agent for the carrier and the applicant's policy number. The insurance must cover any vehicle bearing a wholesaler demonstrator plate that is offered for demonstration or loan to, or otherwise operated by, a customer in the regular course of the applicant's business.

(d) the street address of the permanent nonresidential building or office where business records will be kept and available for inspection by the department; and

(e) a bond of $25,000 filed with the department on behalf of the applicant. The bond must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. The bond must be approved by the department and subject to annual renewal.

(3) The application fee for a wholesaler's license is $5, and the license fee is $25. Both fees must accompany an original or renewal wholesaler's license application.

(4) Wholesalers may not be issued or use dealer plates, as provided in 61-4-102. However, a wholesaler may be issued and is authorized to display and use a wholesaler demonstrator plate on any type of vehicle that a wholesaler is authorized to sell. The fee for a wholesaler demonstrator plate is $3. To the extent not inconsistent with this section, use of wholesaler demonstrator plates is otherwise governed by 61-4-129.

(5) (a) A wholesaler's license must be renewed annually, and application for renewal must be filed on or before December 31 of the expiring license term.

(b) To qualify for renewal of a wholesaler's license, a wholesaler must submit a completed application, in a form prescribed by the department, updating prior submitted information, as originally supplied under subsection (2).

(c) Additionally, the wholesaler shall certify, under penalty of law, that 12 or more vehicles of the type authorized under the license were sold by the wholesaler to a dealer, auto auction, or another wholesaler during the expiring license term. A wholesaler who was licensed for less than a full calendar year in the expiring term shall certify, under penalty of law, to the sale of an average of at least one vehicle a calendar month, or portion of a calendar month, during which the expiring license was in effect.

(d) A wholesaler who fails to meet the sales requirements for license renewal under this section is not eligible for license renewal and may not submit an application for another wholesaler's license or a used motor vehicle dealer's license for a period of 12 months from the expiration of the wholesaler's most recent license term.

(6) A wholesaler whose completed renewal application has been received by the department on or before December 31 of the expiring license term may, if necessary, operate the business and display wholesaler demonstrator plates under the expired license through February 15 of the following year.

History: En. Sec. 7, Ch. 409, L. 1999.

Compiler's Comments

Effective Date: Section 33(2), Ch. 409, L. 1999, provided that this section is effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

61-4-126. Claims against dealer, wholesaler, or auto auction bonds. (1) A person who suffers loss or damage due to the unlawful conduct of a dealer, wholesaler, or auto auction licensed under this title shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond of the dealer, wholesaler, or auto auction. The judgment must set out a specific loss or damage amount and establish that the licensee's unlawful conduct caused the loss or damage, before payment on the bond is required.

(2) If claim is made on a bond by two or more persons who have obtained a judgment against a dealer, wholesaler, or auto auction based on the unlawful conduct of the dealer, wholesaler, or auto auction and the judgments in the aggregate exceed the amount of the bond, the proceeds of the bond must be divided between or among the claimants on a pro rata basis.

History: En. Sec. 8, Ch. 409, L. 1999.

Compiler's Comments

Effective Date: Section 33(2), Ch. 409, L. 1999, provided that this section is effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

61-4-127 and 61-4-128 reserved.

61-4-129. Assignment of demonstrator plates. (1) A dealer or wholesaler may purchase demonstrator plates at a fee of $3 a plate. Demonstrator plates must be issued for each vehicle type for which a dealer's license is required under 61-4-102. Demonstrator plates must be designed by the department in a manner that distinguishes demonstrator plates from dealer plates.

(2) (a) New and used motor vehicle or recreational vehicle demonstrator plates may be used:

(i) to demonstrate, for not more than 72 hours, a vehicle held for sale, when operated by an individual holding a valid operator's license;

(ii) on vehicles owned by the dealership when operated by an officer or bona fide full-time employee of the dealer or wholesaler and used to transport the dealer's or wholesaler's own tools, parts, and equipment;

(iii) on vehicles being tested for repair;

(iv) on vehicles being moved to or from a dealer's place of business for sale;

(v) on vehicles being moved to or from service and repair facilities before sale; and

(vi) on vehicles being moved to or from exhibitions within the state, provided the exhibition does not exceed a period of 20 days.

(b) Mobile home and trailer demonstrator plates may be used:

(i) on units being hauled to or from the place of business of the manufacturer and the place of business of the dealer or to and from places of business of the dealer;

(ii) on mobile homes being hauled to a customer's location for setup after sale;

(iii) on travel trailers held for sale to demonstrate the towing capability of the vehicle, provided that a dated demonstration permit, valid for not more than 72 hours, is carried with the vehicle at all times;

(iv) on any motor vehicle owned by the dealer that is used only to move vehicles legally bearing mobile home and travel trailer dealer's license plates of the dealer owning the motor vehicle; and

(v) on units being moved to or from exhibitions within the state, provided the exhibition does not exceed a period of 20 days.

(c) A vehicle being operated in accordance with this subsection (2) need only display one demonstrator plate conspicuously on the rear of the vehicle.

History: En. Sec. 23, Ch. 409, L. 1999.

Compiler's Comments

Effective Date: Section 33(2), Ch. 409, L. 1999, provided that this section is effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

61-4-130 reserved.

61-4-131. Definitions. As used in 61-4-131 through 61-4-137, "designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer who, in the case of a deceased dealer, is entitled to inherit the dealer's ownership interest in the dealership under the terms of the dealer's will, or who has otherwise been designated in writing by a deceased dealer to succeed the deceased in the motor vehicle dealership, or under the laws of intestate succession of this state or who, in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer's property. The term includes the appointed and qualified personal representative and the testamentary trustee of a deceased dealer.

History: En. 51-609 by Sec. 1, Ch. 381, L. 1977; R.C.M. 1947, 51-609(1), (3); amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 5, Ch. 221, L. 1997.

Cross-References

Department of Commerce, 2-15-1801.

Estates, Trusts, and Fiduciary Relationships, Title 72.

61-4-132. Right of designated family member to succeed in dealership ownership. (1) Any designated family member of a deceased or incapacitated dealer may succeed the dealer in the ownership or operation of the dealership under the existing franchise or distribution agreement provided he gives the manufacturer, factory branch, distributor, or importer of new motor vehicles written notice of his intention to do so within 120 days of the dealer's death or incapacity and unless there exists good cause for refusal to honor such succession on the part of the manufacturer, factory branch, distributor, or importer.

(2) The manufacturer, factory branch, distributor, or importer may request, and the designated family member shall provide, upon request, personal and financial data that is reasonably necessary to determine whether the succession should be honored.

History: En. 51-610 by Sec. 2, Ch. 381, L. 1977; R.C.M. 1947, 51-610.

61-4-133. Refusal to honor succession to ownership — notice required. (1) If a manufacturer, factory branch, distributor, or importer believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a family member of a deceased or incapacitated dealer under the existing franchise agreement, the manufacturer, factory branch, distributor, or importer may, within 30 days of receipt of notice of the designated family member's intent to succeed the dealer in the ownership and operation of the dealership, serve upon the designated family member and the department notice of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 90 days from the date the notice is served.

(2) The notice must state the specific grounds for the refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 90 days from the date the notice is served.

(3) If notice of refusal and discontinuance is not timely served upon the family member and the department or if the department rules in favor of the complainant in a hearing held pursuant to 61-4-134, the franchise agreement must continue in effect subject to termination only as otherwise permitted by law.

History: **En. 51-611 by Sec. 3, Ch. 381, L. 1977; R.C.M. 1947, 51-611; amd. Sec. 6, Ch. 221, L. 1997.**

Cross-References

Notice — actual and constructive, 1-1-217.

Notice, 2-4-601.

Canceled dealership contracts — repurchase requirements, Title 30, ch. 11, part 7.

Unfair trade practices generally, Title 30, ch. 14, part 2.

61-4-134. Procedure to determine right to succeed. (1) Any designated family member who receives notice of the manufacturer's, factory branch, distributor's, or importer's refusal to honor the family member's succession to the ownership and operation of the dealership may, within the 90-day period, file with the department a verified complaint for a hearing and determination by the department on whether good cause exists for refusal and discontinuance.

(2) The manufacturer, factory branch, distributor, or importer must establish good cause for refusal by showing that the succession would be detrimental to the public interest or to the representation of the manufacturer, factory branch, distributor, or importer.

(3) The franchise agreement must continue in effect until the final adjudication by the department on the verified complaint and the exhaustion of all appellate remedies available to the designated family member. The manufacturer, factory branch, distributor, or importer and the designated family member shall abide by the terms of the franchise agreement and the laws of Montana during the appeals process.

(4) If the manufacturer, factory branch, distributor, or importer prevails, the department shall include in its order approving the termination of the franchise agreement reasonable conditions affording the complainant an opportunity to receive fair and reasonable compensation for the value of the dealership.

(5) Any decision by the department may be reviewed pursuant to Title 2, chapter 4, part 7.

History: **En. 51-612 by Sec. 4, Ch. 381, L. 1977; R.C.M. 1947, 51-612; amd. Sec. 7, Ch. 221, L. 1997.**

Cross-References

Contested cases, Title 2, ch. 4, part 6.

61-4-135. Written designation of succession unaffected. Sections 61-4-131 through 61-4-137 do not preclude a dealer from designating any person as his successor by written instrument filed with the manufacturer, factory branch, distributor, or importer.

History: **En. 51-613 by Sec. 5, Ch. 381, L. 1977; R.C.M. 1947, 51-613.**

61-4-136. Violation — penalty. Any person violating the provisions of 61-4-131 through 61-4-137 shall upon conviction be fined no more than $5,000.

History: **En. 51-614 by Sec. 6, Ch. 381, L. 1977; R.C.M. 1947, 51-614.**

61-4-137. Civil damages. Any dealer suffering pecuniary loss due to a violation of 61-4-131 through 61-4-137, upon prevailing in a civil action therefor, is entitled to damages equal to three times the pecuniary loss together with court costs and reasonable attorneys' fees.

History: **En. 51-615 by Sec. 7, Ch. 381, L. 1977; R.C.M. 1947, 51-615.**

Cross-References

When exemplary damages allowed, 27-1-221.

Measure of damages, Title 27, ch. 1, part 3.

61-4-138 through 61-4-140 reserved.

61-4-141. Manufacturer's right of first refusal. (1) Regardless of the terms of any franchise agreement, in the event of a proposed sale or transfer of a dealership, the manufacturer or distributor may exercise a right of first refusal to acquire the new vehicle dealer's assets or ownership. This may occur if the sale or transfer is conditioned upon either the manufacturer or dealer entering into a dealer agreement with the proposed new owner or transferee if all the following requirements are met:

(a) the manufacturer or distributor notifies the dealer in writing of the manufacturer's or dealer's intent to exercise the right of first refusal within 60 days of receipt of the dealer's written proposal for sale or transfer;

(b) the dealer and the dealer's owner receive the same or greater consideration as they have contracted to receive in connection with the proposed change of ownership or transfer;

(c) the proposed sale or transfer of the dealership's assets does not involve the transfer or sale to a member or members of the family of one or more dealer owners or to a qualified manager, partnership, or corporation controlled by a member of the family of a dealer owner; and

(d) the manufacturer or distributor agrees to pay reasonable costs and attorney fees relative to the proposed changes in ownership or transfer of dealership assets. In order for costs and fees to be payable, the dealer shall submit an accounting of the expenses within 20 days of the dealer's receipt of the manufacturer's or distributor's written request for the accounting. The manufacturer or distributor may request the accounting before exercising the manufacturer's or distributor's right of first refusal.

(2) This section does not affect any contractual right of a manufacturer or distributor to charge back to the dealer's account any amount previously credited or paid as a discount incident to the dealer's purchase of the vehicles.

History: En. Sec. 13, Ch. 221, L. 1997.

Part 2

Licensing of New Motor Vehicle Manufacturers, Distributors, and Importers

Part Cross-References

Canceled dealership contracts — repurchase requirements, Title 30, ch. 11, part 7.

61-4-201. Definitions. As used in this part, the following definitions apply unless the context clearly indicates otherwise:

(1) "Community" means the relevant market area of a franchise. For the purposes of this part, the relevant market area of a franchise is the county or counties in which the franchisee is located.

(2) "Distributor" or "wholesaler" means a person who sells or distributes new motor vehicles to new motor vehicle dealers in this state or who maintains distributor representatives in this state.

(3) "Distributor branch" means a branch office maintained or availed of by a distributor or wholesaler for the sale of new motor vehicles to new motor vehicle dealers in this state for directing or supervising its representatives in this state.

(4) "Factory branch" means a branch office maintained or availed of by a manufacturer for the sale of new motor vehicles to distributors or for the sale of new motor vehicles to new motor vehicle dealers in this state or for directing or supervising its representatives in this state.

(5) "Franchise" means a contract between or among two or more persons when all of the following conditions are included:

(a) a commercial relationship of definite duration or continuing indefinite duration is involved;

(b) the franchisee is granted the right to:

(i) offer, sell, and service in this state new motor vehicles manufactured or distributed by the franchisor; or

(ii) service motor vehicles pursuant to the terms of a franchise and a manufacturer's warranty;

(c) the franchisee, as an independent and separate business, constitutes a component of the franchisor's distribution system; and

(d) the operation of the franchisee's business is substantially reliant on the franchisor for the continued supply of new motor vehicles, parts, and accessories.

(6) "Franchisee" means a person who receives new motor vehicles from the franchisor under a franchise and who offers, sells, and services the new motor vehicles to and for the general public.

(7) "Franchisor" means a person who manufactures, imports, or distributes new motor vehicles and who may enter into a franchise.

(8) "Importer" means a person who transports or arranges for the transportation of a foreign manufactured new motor vehicle into the United States for sale in this state.

(9) "Manufacturer" means a person who manufactures or assembles new motor vehicles or who manufactures or installs on previously assembled truck chassis special bodies or equipment that, when installed, forms an integral part of the new motor vehicle and that constitutes a major manufacturing alteration, but does not include a person who installs a camper on a pickup truck.

(10) "Motor vehicle" includes a personal watercraft as defined in 23-2-502, a snowmobile as defined in 23-2-601, and an off-highway vehicle as defined in 23-2-801.

(11) "New motor vehicle" means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.

(12) "New motor vehicle dealer" means a person who buys, sells, exchanges, or offers or attempts to negotiate a sale or exchange or any interest in or who is engaged in the business of selling new motor vehicles under a franchise with the manufacturer of the new motor vehicles or used motor vehicles taken in trade on new motor vehicles.

(13) (a) "Retail sale" means the sale of a new motor vehicle.

(b) "Retail sale" does not mean a sale:

(i) of a new motor vehicle to a purchaser who is acquiring the vehicle for the purposes of a resale; or

(ii) that is the result of a transfer between two licensed new motor vehicle dealers.

History: En. 51-601 by Sec. 1, Ch. 380, L. 1977; R.C.M. 1947, 51-601(1) thru (9), (11), (12); amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 431, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 8, Ch. 221, L. 1997; amd. Sec. 1, Ch. 313, L. 1999; amd. Sec. 4, Ch. 384, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 313 in definition of franchise inserted (b)(ii) expanding franchise condition to include service motor vehicles under terms of franchise and manufacturer's warranty and in (c) substituted "an independent and separate business" for "a separate business"; and made minor changes in style. Amendment effective April 15, 1999.

Chapter 384 at end of introductory clause inserted "unless the context clearly indicates otherwise"; inserted definition of motor vehicle; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Termination or substantial alteration of farm implements dealership agreements, Title 30, ch. 11, part 8.

61-4-202. License requirements — fee exemption. (1) A new motor vehicle dealer, manufacturer, distributor, factory branch, distributor branch, importer, or franchiser may not engage in business in Montana except in accordance with the requirements of this part. The provisions of this part do not apply to a public officer engaged in the discharge of official duties or to a trustee, receiver, or other officer acting under the jurisdiction of a court, to financial institutions disposing of repossessed vehicles, or to a person disposing of a personal vehicle. The provisions of this part regulating and licensing new motor vehicle dealers, manufacturers, distributors, factory branches, distributor branches, importers, and franchisors apply only to those new motor vehicle dealers, manufacturers, distributors, factory branches, distributor branches, importers, and franchisors of motor vehicles as defined by this part.

(2) (a) A manufacturer, distributor, factory branch, distributor branch, importer, or franchisor transacting business within Montana by offering, selling, trading, consigning, or otherwise transferring a new motor vehicle to a new motor vehicle dealer must be licensed by the state of Montana. The department shall issue licenses to qualified applicants upon receipt of a license fee in the amount of $15 accompanied by the information required in this section.

(b) A manufacturer, distributor, factory branch, distributor branch, importer, or franchisor of a personal watercraft as defined in 23-2-502, a snowmobile as defined in 23-2-601, or an off-highway vehicle as defined in 23-2-801 is not required to pay the $15 fee required in subsection (2)(a).

(3) The following information, if applicable, must be submitted by an applicant upon forms supplied by the department:

(a) the name and address of the applicant;

(b) the make and model of each new motor vehicle to be franchised;

(c) the name and address of each of the applicant's franchisees within the state; and

(d) the name and address of each factory branch, distributor branch, agent, or representative within the state.

(4) (a) Except as provided in subsection (4)(b), a license may be renewed each year if the applicant is in compliance with the provisions of this part, remits a renewal fee in the amount of $15, and notifies the department of any changes in the information previously supplied.

(b) A manufacturer, distributor, factory branch, distributor branch, importer, or franchisor of a personal watercraft as defined in 23-2-502, a snowmobile as defined in 23-2-601, or an off-highway vehicle as defined in 23-2-801 is not required to pay the $15 fee required in subsection (4)(a) but is required to annually apply to renew its license on a form provided by the department.

(5) (a) A new motor vehicle may not be sold in this state unless either the manufacturer on direct dealership of domestic vehicles, the importer of foreign manufactured vehicles on direct dealership, or the distributor on indirect dealerships of either domestic or foreign vehicles is licensed as provided in this part.

(b) Notwithstanding any other licensing provision contained in Montana law, every new motor vehicle dealer shall obtain a license under part 1 of this chapter.

(c) The obtaining of a license under this part or Title 61, chapter 4, part 1 conclusively establishes that a new motor vehicle dealer, manufacturer, distributor, or importer is subject to the laws of this state regulating new motor vehicle dealers, manufacturers, importers, and distributors.

(d) The provisions of subsection (5)(b) do not apply to dealers of personal watercraft, snowmobiles, or off-highway vehicles licensed under the provisions of Title 23.

History: En. 51-602 by Sec. 2, Ch. 380, L. 1977; R.C.M. 1947, 51-602; amd. Sec. 1, Ch. 557, L. 1979; amd. Secs. 2, 3, Ch. 431, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 5, Ch. 384, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 384 in (1) near middle of first sentence inserted "importer, or franchiser" and in last sentence in two places inserted reference to importers; inserted (2)(b) exempting certain persons from license fee; at beginning of (4)(a) inserted exception clause; inserted (4)(b) exempting certain persons from renewal fee and requiring annual renewal of the persons; inserted (5)(d) exempting certain dealers from licensing requirements of subsection (5)(b); and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Writ of attachment — execution, Title 27, ch. 18, part 3.

Receivers, Title 27, ch. 20.

Small business licensing coordination, Title 30, ch. 16.

Department of Justice — disposition of fees, 61-3-108.

Trust administration, Title 72, ch. 34.

61-4-203. Administration. The department shall supervise and regulate all persons required by this part to be licensed. In the supervision and regulation thereof the department may:

(1) make investigations it considers necessary;

(2) conduct hearings and compel attendance of witnesses at the hearings pursuant to the Montana Administrative Procedure Act; and

(3) prescribe rules it determines necessary to carry out the provisions of this part.

History: En. 51-603 by Sec. 3, Ch. 380, L. 1977; R.C.M. 1947, 51-603; amd. Sec. 2, Ch. 431, L. 1981; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Montana Administrative Procedure Act — subpoenas and enforcement — compelling testimony, 2-4-104.

Adoption and publication of rules, Title 2, ch. 4, part 3.

61-4-204. Filing agreement — product liability. (1) A franchisee shall, at the time of application for a new motor vehicle dealer license under the provisions of Title 23 or 61-4-101, file with the department a certified copy of the franchisee's written agreement with a manufacturer and a certificate of appointment as dealer or distributor. The certificate of appointment must be signed by an authorized agent of the manufacturer of domestic vehicles whenever there is a direct manufacturer dealer agreement or by an authorized agent of the distributor whenever the manufacturer is wholesaling through an appointed distributorship. The certificate must be signed by an authorized agent of the importer of foreign-made vehicles whenever there is a direct importer-dealer agreement or by an authorized agent of the distributor whenever there is an indirect distributor-dealer agreement. The distributor's certificate of appointment must be signed by an authorized agent of the manufacturer of domestically manufactured vehicles or by an authorized agent of the manufacturer or importer of foreign-made vehicles.

(2) A franchisee need not file a written agreement or certificate of appointment if the manufacturer on direct dealerships or distributor on indirect dealerships or importer on direct dealerships uses the identical basic agreement for all its franchised dealers or distributors in this state and certifies in the certificate of appointment that the blanket agreement is on file and the written agreement with the particular dealer or distributor, respectively, is identical with the filed blanket agreement and that the franchisee has filed with the department one agreement together with a list of franchised dealers or distributors.

(3) A manufacturer, distributor, or importer shall notify the department within 30 days of any revision of or addition to the basic agreement on file or of any franchise supplement to the agreement. Annual renewal of a certificate filed as provided in this section is not required.

(4) A manufacturer shall file with the department a copy of the delivery and preparation obligations required to be performed by a dealer prior to the delivery of a new motor vehicle to a buyer. These delivery and preparation obligations constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body, or parts defects arising from an express or implied warranty of the manufacturer constitute the manufacturer's product or warranty liability only. However, this section may not affect the obligations of new motor vehicle dealers to perform warranty repair and maintenance that may be required by law or contract. Except with regard to household appliances, including but not limited to ranges, refrigerators, and water heaters, in a recreational vehicle, as defined in 61-1-132, and except with regard to a truck rated at more than 10,000 pounds gross vehicle weight, the manufacturer shall compensate an authorized dealer for labor, parts, and other expenses incurred by a dealer who performs work to rectify the manufacturer's product or warranty defect or for delivery and preparation obligations at the same rate and time the dealer charges to its retail customers for nonwarranty work of a like kind, based upon a published, nationally recognized, retail flat rate labor time guide manual if the dealer uses the manual as the basis for computing charges for both warranty and retail work.

(5) (a) All claims made by the dealer pursuant to this section for compensation for delivery, preparation, warranty, and recall service, including labor, parts, and other expenses, must be paid by the manufacturer within 30 days of receipt of the claim from the dealer, except that a manufacturer of a motor home, as defined in 61-1-130, shall pay any claim within 60 days of receipt from the dealer.

(b) If a claim is disapproved, the dealer must be notified in writing of the grounds for disapproval. A claim that has not been disapproved in writing within 30 days of having been received must be considered approved, and payment is due to the claimant immediately. However, the manufacturer retains the right to audit a claim for a period of 12 months following the payment of the claim.

(c) A claim that has been approved and paid may not be charged back to the dealer unless the manufacturer proves that:

(i) the claim was false or fraudulent;

(ii) the repairs were not properly made; or

(iii) the repairs were not necessary to correct the defective condition.

(d) A manufacturer may not deny a claim or reduce the amount to be reimbursed to the dealer if the dealer has provided reasonably sufficient documentation demonstrating that the dealer performed the services in compliance with the written policies and procedures of the manufacturer.

(e) A franchisor may reasonably and periodically audit a motor vehicle dealer to determine the validity of paid claims or chargebacks for customer or dealer incentives. An audit of incentive payments may apply only to the 18-month period immediately preceding the date on which the dealer was notified of an impending audit.

(6) The dealer shall furnish the purchaser of a new vehicle with a signed copy of the manufacturer's delivery and preparation requirements indicating that each of those requirements has been performed.

History: En. 51-604 by Sec. 4, Ch. 380, L. 1977; R.C.M. 1947, 51-604(1) thru (3), (5), (6); amd. Sec. 2, Ch. 431, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 229, L. 1991; amd. Sec. 2, Ch. 313, L. 1999; amd. Sec. 6, Ch. 384, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 313 inserted (5) requiring payment of claim for delivery, preparation, warranty, and recall service compensation by manufacturer within 30 days of claim receipt, providing exception for motor home manufacturer, providing procedure when claim approved or disapproved, prohibiting manufacturer from denying claim or reducing claim amount if dealer provides sufficient documentation, and authorizing franchisor to audit dealer on validity of claims or chargebacks for incentives and limiting audit to 18-month period preceding date of audit notification; and made minor changes in style. Amendment effective April 15, 1999.

Chapter 384 near beginning of (1) inserted reference to Title 23; and made minor changes in style. Amendment effective October 1, 1999.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Cross-References

Liability, Title 27, ch. 1, part 7.

Agency, Title 28, ch. 10.

U.C.C. — sales — warranties, 30-2-312 through 30-2-318.

Duties of Department of Justice — records, 61-3-101.

New motor vehicle warranties — remedies, Title 61, ch. 4, part 5.

61-4-205. Limitations on cancellation and termination. (1) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, a franchisor may not cancel, terminate, or refuse to continue a franchise unless the franchisor has cause for termination or noncontinuance.

(2) A franchisor may not enter into a franchise for the purpose of establishing an additional new motor vehicle dealership in any community in which the same line-make is then represented unless there is good cause for an additional new motor vehicle dealership under a franchise and it is in the public interest.

(3) If a franchisor seeks to terminate or not continue a franchise or seeks to enter into a franchise establishing an additional new motor vehicle dealership of the same line-make, the franchisor shall, not less than 60 days prior to the intended action, and the franchisee may, at any time, file a notice with the department of intention to terminate or not continue the franchise or to enter into a franchise for additional representation of the same line-make. A notice of intention to terminate or not continue a franchise is not required from a franchisor until the conclusion of any review proceeding of that intention offered to the franchisee under the franchise. This section does not apply to an intended termination or noncontinuance of a franchise that the franchisee elects voluntarily, pursuant to a plan established by a franchisor, to submit to binding arbitration.

(4) Upon receiving a notice of intention under the provisions of subsection (3), the department shall, within 5 days of receipt of a notice of intention, send by certified mail, with return receipt requested, a copy of the notice to the franchisor and to the franchisee whose franchise the franchisor seeks to establish, terminate, or not continue. If the notice states an intent to establish an additional new motor vehicle dealership, a copy of the notice must be sent within 5 days of receipt to all franchisees in the community who are then engaged in the business of offering to sell or selling the same line-make. Copies of notices must be addressed to the principal place of business of each recipient and to the statutory agent of each corporate recipient. The department may also give a copy of the franchisor's notice to any other parties whom the department may consider interested persons.

(5) In instances where the change in ownership has the effect of the sale of the franchise, the franchisor may not without good cause withhold its consent to the sale. Good cause relates only to the transferee's financial and managerial capabilities or to the inability of the transferee to comply with a state or federal law relating to new motor vehicle dealerships. The burden of establishing good cause is upon the franchisor.

(6) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, in the event of the sale or transfer of ownership of the franchisee's dealership by sale or transfer of the business or by stock transfer to the dealer's or wholesaler's spouse, son, or daughter, the franchisor shall give effect to the sale or transfer of ownership in the franchise unless the transfer of the franchisee's new motor vehicle dealer's or wholesaler's license is denied or the new owner is unable to obtain a license under the laws of this state.

(7) If a franchisor enters into or attempts to enter into a franchise, whether upon termination or refusal to continue another franchise or upon the establishment of an additional new motor vehicle dealership in a community where the same line-make is then represented, without first complying with the provisions of this part, a license under Title 23 or 61-4-101 may not be

issued to that franchisee or proposed franchisee to engage in the business of selling new motor vehicles manufactured or distributed by that franchisor.

History: En. 51-605 by Sec. 5, Ch. 380, L. 1977; R.C.M. 1947, 51-605(1) thru (4), (11), (12), (14); amd. Sec. 2, Ch. 431, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 12, Ch. 383, L. 1991; amd. Sec. 9, Ch. 221, L. 1997; amd. Sec. 7, Ch. 384, L. 1999; amd. Sec. 29, Ch. 409, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 384 in (7) inserted reference to Title 23; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 409 in (7) near end after "61-4-101" deleted "through 61-4-105". Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

Cross-References

Notice, 2-4-601.

Arbitration, Title 27, ch. 5.

Contracts in restraint of trade generally void, 28-2-703.

U.C.C. — bulk transfers, Title 30, ch. 6.

U.C.C. — investment securities — purchase, Title 30, ch. 8, part 3.

Canceled dealership contracts — repurchase requirements, Title 30, ch. 11, part 7.

61-4-206. Objections — hearing. (1) A person who receives or is entitled to receive a copy of a notice provided for in 61-4-205(4) may object to the approval of the proposed action by filing a written objection with the department within 15 days from the date the notice was received by the person entitled to receive the notice. If an objection is not filed within 15 days from the date the notice was received, the proposed action must be approved.

(2) If a timely objection has been filed, the department shall enter an order fixing the time, which must be within 30 days of the date of the order, and place of a hearing on the objection and shall send by certified mail with return receipt requested a copy of the notice provided for in 61-4-205(4).

(3) The department may upon request continue the date of hearing for a period of 30 days and may upon application, but not ex parte, continue the date of hearing for an additional period of 30 days.

(4) Upon hearing or upon objection to the establishment of a new motor vehicle dealership, the franchisor has the burden of proof to establish that good cause exists to terminate, not continue, or not establish the franchise.

(5) The rules of evidence for a hearing provided for in subsection (2) are the same as those found in Title 2, chapter 4. The department shall reasonably apportion all costs between the parties.

(6) The department may issue subpoenas, administer oaths, and compel the attendance of witnesses and production of books, papers, documents, and all other evidence. The department may apply to the district court of the county in which the hearing is held for a court order enforcing this section. The hearing must be conducted pursuant to Title 2, chapter 4.

(7) A transcript of the testimony of each witness taken at the hearing must be made and preserved. Within 30 days after the hearing, the department shall make written findings of fact and conclusions and enter a final order.

(8) Any party to the hearing before the department may appeal pursuant to Title 2, chapter 4.

(9) The franchise agreement must continue in effect until the adjudication by the department on the verified complaint and the exhaustion of all appellate remedies available to the franchisee. The franchisor and the franchisee shall

abide by the terms of the franchise and the laws of Montana during the appeals process.

History: En. 51-605 by Sec. 5, Ch. 380, L. 1977; R.C.M. 1947, 51-605(5) thru (9), (13), (17), (18); amd. Sec. 2, Ch. 431, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 10, Ch. 221, L. 1997.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

61-4-207. Determination of good cause. (1) In determining whether good cause has been established for terminating or not continuing a franchise, the department shall take into consideration the existing circumstances, including but not limited to:

(a) amount of business transacted by the franchise;

(b) investment necessarily made and obligations incurred by the franchisee in the performance of the franchisee's part of the franchise;

(c) permanency of the investment;

(d) whether it is injurious to the public welfare for the business of the franchisee to be discontinued;

(e) whether the franchisee has adequate new motor vehicle facilities, equipment, parts, and qualified management, sales, and service personnel to reasonably provide consumer care for the new motor vehicles sold at retail by the franchisee and any other new motor vehicle of the same line-make;

(f) whether the franchisee refuses to honor warranties of the franchisor to be performed by the franchisee if the franchisor reimburses the franchisee for warranty work performed by the franchisee; and

(g) except as provided in subsection (2), failure by the franchisee to substantially comply with the written and uniformly applied requirements of the franchise that are determined by the department to be reasonable and material.

(2) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, the following do not constitute good cause for the termination or noncontinuance of a franchise:

(a) a change in ownership of the franchisee's dealership; or

(b) the fact that the franchisee refused to purchase or accept delivery of a new motor vehicle, part, accessory, or any other commodity or service not ordered by the franchisee.

(3) In determining whether good cause has been established for entering into an additional franchise for the same line-make, the department shall take into consideration the existing circumstances, including but not limited to:

(a) amount of business transacted by other franchisees of the same line-make in that community;

(b) investment necessarily made and obligations incurred by other franchisees of the same line-make in that community in the performance of their part of their franchises; and

(c) whether the franchisees of the same line-make in that community are providing adequate consumer care, including satisfactory new motor vehicle dealer sales and service facilities, equipment, parts supply, and qualified management, sales, and service personnel, for the new motor vehicle products of the line-make.

History: **En. 51-605 by Sec. 5, Ch. 380, L. 1977; R.C.M. 1947, 51-605(10), (15), (16); amd. Sec. 2, Ch. 431, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 11, Ch. 221, L. 1997.**

61-4-208. Prohibited acts. (1) A manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of the persons or entities listed may not:

(a) coerce, attempt to coerce, or require a new motor vehicle dealer to:

(i) accept delivery of a new motor vehicle, a part, or an accessory for a new motor vehicle or any other commodity that has not been ordered by the dealer;

(ii) participate in or contribute to any local, regional, or national advertising fund or to participate in or to contribute to contests, giveaways, or other sales devices;

(iii) change location of the dealership or to make substantial alterations to the use or number of franchises or the dealership premises or facilities when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles that would justify an expansion;

(iv) either establish or maintain exclusive facilities, personnel, or display space or to abandon an existing franchise relationship with another manufacturer that was established before April 8, 1997, when those requirements are not justified by reasonable business considerations;

(v) refrain from participation in the management of, investment in, or acquisition of any other line of new motor vehicle or related products if the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles and remains in compliance with any reasonable capital standards and facility requirements of the manufacturer; or

(vi) enter into an agreement with a manufacturer, factory branch, distributor, distributor branch, or representative of the listed persons or entities or do any other act unfair to the dealer by:

(A) threatening to cancel or not renew a franchise existing between the manufacturer, factory branch, distributor, distributor branch, or representative of the listed persons or entities and the dealer; or

(B) threatening to withhold, delay, or disrupt the receipt of new motor vehicles or any motor vehicle parts or supplies ordered by the dealer from the manufacturer, factory branch, distributor, distributor branch, importer, or representative or agent of the listed entities;

(b) delay, refuse, or fail to deliver new vehicles in a reasonable time in a reasonable quantity relative to the new vehicle dealer's facilities and sales potential after accepting an order from a new vehicle dealer if the new vehicles are publicly advertised as being available for immediate delivery; or

(c) impose unreasonable restrictions on the assertion of legal or equitable rights on the new motor vehicle dealer or franchise regarding transfer; sale; right to renew; termination; discipline; noncompetition covenants; site control, whether by sublease, collateral pledge of lease, or otherwise; or compliance with subjective standards.

(2) There is no violation of subsection (1)(a)(iii) or (1)(b) if a failure on the part of the manufacturer, factory branch, distributor, or distributor branch is beyond the control of the listed persons or entities.

(3) (a) Except as provided in subsection (3)(b) or (3)(c), a manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an

importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may not own or operate, directly or indirectly, a motor vehicle dealership in Montana that is for sale or has been for sale under a franchise agreement with a new motor vehicle dealer in Montana.

(b) If there is no independent person available to own and operate a motor vehicle dealership in a manner that is consistent with the public interest, a manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may own and operate a motor vehicle dealership for a temporary period, not to exceed 1 year, during the transition from one owner of the dealership to another. Approval of the sale may not be unreasonably withheld by the manufacturer.

(c) A manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may own an interest in a motor vehicle dealership but may not operate the dealership unless a manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities has a bona fide business relationship with an independent person who is not a franchisor or a franchisor's agent or affiliate, who has made an investment that is subject to loss in the dealership, and who reasonably expects to acquire full ownership of the dealership on reasonable terms and conditions.

History: En. 51-606 by Sec. 6, Ch. 380, L. 1977; R.C.M. 1947, 51-606; amd. Sec. 1, Ch. 202, L. 1991; amd. Sec. 12, Ch. 221, L. 1997; amd. Sec. 3, Ch. 313, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 313 inserted (3) regarding persons who may directly or indirectly own or operate a motor vehicle dealership in Montana and providing exceptions from prohibition; and made minor changes in style. Amendment effective April 15, 1999.

Cross-References

Contracts — consent in general, Title 28, ch. 2, part 3.

Contracts — circumstances that affect validity of apparent consent, Title 28, ch. 2, part 4.

61-4-209. Cease and desist orders. When the department has reasonable cause to believe, from information furnished to or from an investigation made by it, that any person is engaged in any business regulated by this part without being licensed as required, it shall immediately issue and serve upon such person, by certified mail, a cease and desist order, requiring him to cease and desist from further engaging in that business. Upon failure of that person to comply with the order, the department shall file an action in the district court of Lewis and Clark County to restrain and enjoin the person from engaging in the business. The court in the action shall proceed as in other actions for injunctions.

History: En. 51-608 by Sec. 8, Ch. 380, L. 1977; R.C.M. 1947, 51-608; amd. Sec. 2, Ch. 431, L. 1981; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Injunctions, Title 27, ch. 19.

61-4-210. Penalties — administrative penalties. (1) Except as provided in subsection (2), a person who violates any provision of this part is guilty of a misdemeanor and upon conviction shall be fined not less than $500 or more than $1,000 for each violation. Each day that a violation continues or occurs constitutes a separate violation.

(2) A manufacturer on direct dealerships, distributor on indirect dealerships, or importer on direct dealerships who has filed with the department an agreement used by all its franchisees in this state together with a list of all such franchisees and who fails to notify the department within 30 days of any revision, change, or addition thereto is guilty of a misdemeanor and upon conviction shall be fined not to exceed $500.

(3) If any new motor vehicle dealer incurs pecuniary loss due to a violation of this part by a manufacturer, distributor, importer, or factory branch or representative or agent thereof, the dealer may recover damages therefor in a court of competent jurisdiction in amount equal to three times the pecuniary loss, together with costs including reasonable attorney's fees.

(4) In addition to any other penalty provided for in this part, the department may take appropriate enforcement action on its own initiative in accordance with the contested case procedures of Title 2, chapter 4. A person who violates the provisions of this part may be subject to administrative action and a civil penalty not to exceed $500 for each violation.

History: En. 51-604, 51-607 by Secs. 4, 7, Ch. 380, L. 1977; R.C.M. 1947, 51-604(4), 51-607; amd. Sec. 2, Ch. 431, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 2, Ch. 229, L. 1991.

Cross-References

Costs, Title 25, ch. 10.

When exemplary damages allowed, 27-1-221.

Measure of damages, Title 27, ch. 1, part 3.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

61-4-211. Repealed. Sec. 4, Ch. 431, L. 1981.

History: En. Sec. 2, Ch. 557, L. 1979.

61-4-212 through 61-4-220 reserved.

61-4-221. Manufacturer's representative's license plates. (1) As used in 61-4-221 through 61-4-223, "manufacturer's representative" means a resident of Montana who is an employee of a motor vehicle manufacturer licensed under the provisions of 61-4-202 and whose responsibility includes coordinating and promoting sales efforts with the manufacturer's dealers.

(2) Subject to the provisions of 61-4-221 through 61-4-223 and notwithstanding the provisions of Title 61, chapter 3, a manufacturer's representative who qualifies as provided in subsection (1) may display manufacturer's license plates on a motor vehicle used solely for business purposes.

(3) To qualify for the issuance and use of manufacturer's license plates by its manufacturer's representatives, the manufacturer licensed under 61-4-202 shall apply on forms and in a manner prescribed by the department and pay the fees provided for in 61-4-222.

History: En. Sec. 1, Ch. 404, L. 1989.

Cross-References

Residence — rules for determining, 1-1-215.

61-4-222. Fees. (1) Upon making the application required under 61-4-221, the manufacturer shall pay to the department a fee of $250, which entitles the manufacturer to one set of number plates, and an additional fee of

$20 for each additional set of number plates. The manufacturer may receive one set of number plates for each manufacturer's representative.

(2) The fees provided for in subsection (1) do not apply to the manufacturer of a personal watercraft as defined in 23-2-502, a snowmobile as defined in 23-2-601, or an off-highway vehicle as defined in 23-2-801.

History: En. Sec. 2, Ch. 404, L. 1989; amd. Sec. 8, Ch. 384, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 384 inserted (2) exempting certain manufacturers from fees for number plates; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Department of Justice — disposition of fees, 61-3-108.

61-4-223. Assignment of numbers. (1) Upon the licensing of a manufacturer under 61-4-202, the department shall assign to the manufacturer a distinctive serial number and, after payment of fees provided for in 61-4-222, furnish every qualified manufacturer's representative of that manufacturer with one set of number plates. Assigned number plates must be similar to number plates furnished to owners of motor vehicles but must bear, in addition to the serial number assigned to the manufacturer, the letters "MFG".

(2) The department shall cause to be placed on each set of license plates issued to a manufacturer a serial number assigned to the manufacturer and the actual number of license plates issued to the manufacturer. The department shall provide nonremovable stickers bearing the appropriate county designation. The stickers must be affixed to the license plates in use in accordance with instructions by the department.

(3) A manufacturer's representative who qualifies as provided in 61-4-221(1) may display manufacturer's license plates on a motor vehicle held for bona fide sale or used solely in the conduct of the manufacturer's business and operated by or under the control of the manufacturer's representative.

(4) When the department has reasonable cause to believe, from an investigation made by it or information furnished to it by a sheriff or any other law enforcement officer, that a manufacturer has been improperly licensed, has used the manufacturer's license other than as authorized in this section, or is not qualified as a manufacturer under the requirements of this part, the department may revoke the manufacturer's license.

History: En. Sec. 3, Ch. 404, L. 1989.

Part 3

Transportation of Vehicles

Part Cross-References

New motor vehicles towed into state to be labeled, 61-4-113.

61-4-301. Permit and transit plates for new vehicles being transported by driveaway or towaway methods — used mobile homes. (1) (a) A person, firm, partnership, or corporation, regularly and lawfully engaged in the transportation of new vehicles over the highways of this state from manufacturing or assembly points to agents of manufacturers and dealers in this state or in other states, territories, or foreign countries or provinces by the driveaway or towaway methods, where the vehicles being driven, towed, or transported by the saddle-mount, towbar or full-mount methods, or a lawful combination of these methods, will be transported over the highways of the state but once, may annually apply to the department of justice for a permit to use the highways of this state and shall pay, upon filing the application, a fee of $100. Upon processing of the application, that department shall issue an annual permit to the applicant.

(b) A person moving used mobile homes from a point outside the state to a point inside the state may apply to the department for the permit authorized pursuant to subsection (1)(a).

(2) The permitholder may also apply to the department of justice for a sufficient number of distinctive transit plates or devices showing the permit number for identification of the vehicles being transported by the permitholder, and the plates or devices may be used on a vehicle being driven, towed, or transported by and under the control of the permitholder. That department shall collect the additional sum of $1 for each pair of transit plates or devices applied for and issued.

(3) The department of justice shall retain the permit and plate fees to defray costs of administering 61-4-301 through 61-4-308.

(4) The permit and transit plates or devices expire on December 31 of each year.

History: En. Sec. 6-401, Ch. 197, L. 1965; amd. Sec. 121, Ch. 316, L. 1974; R.C.M. 1947, 32-3401; amd. Sec. 14, Ch. 575, L. 1993.

Cross-References

Special mobile equipment — identification plate, 61-3-431.

Brakes required on all wheels — exceptions, 61-9-304.

61-4-302. One-trip fee in addition to permit and plate fees payable quarterly — exception. (1) In addition to the permit and plate fees, a permit holder shall pay to the department of justice a one-trip fee of $5 per driven vehicle. The fee shall be paid within 15 days after the end of the calendar quarter upon forms recommended or supplied by that department.

(2) A person moving new or used mobile homes is not subject to the one-trip fee required by subsection (1).

History: En. Sec. 6-402, Ch. 197, L. 1965; amd. Sec. 122, Ch. 316, L. 1974; R.C.M. 1947, 32-3402; amd. Sec. 15, Ch. 575, L. 1993.

61-4-303. Disposition of funds collected. The department of justice shall retain 5% of the funds collected in payment of the trip fees to defray costs of administration. The remaining 95% shall be transferred, on or before the 15th day of each month after collection, to the credit of the department of transportation.

History: En. Sec. 6-403, Ch. 197, L. 1965; amd. Sec. 123, Ch. 316, L. 1974; amd. Sec. 2, Ch. 286, L. 1977; R.C.M. 1947, 32-3403; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Highway revenue nondiversion, Art. VIII, sec. 6, Mont. Const.

Fund structure, 17-2-102.

61-4-304. Fees provided for to be in addition to fees now payable under chapter 12, Title 69. The fees provided for driveaway or towaway transportation are in addition to any fees payable by for-hire carriers under the provisions of chapter 12, Title 69.

History: En. Sec. 6-404, Ch. 197, L. 1965; R.C.M. 1947, 32-3404.

61-4-305. Driveaway or towaway fees in lieu of other fees payable — election to pay other fees. The fees provided for driveaway or towaway transporters are in consideration of the right to use the highways of the state and except as provided in 61-4-304 are in lieu of all other fees including those which might be payable under the provisions of part 2 of chapter 10. However, any operator may elect to pay the fees payable under the provisions of that part.

History: En. Sec. 6-405, Ch. 197, L. 1965; R.C.M. 1947, 32-3405; amd. Sec. 51, Ch. 421, L. 1979.

61-4-306. Exemptions from fees. The fees provided for driveaway or towaway transporters shall not apply to:

(1) vehicles regularly used in the hauling of vehicles by the truckaway method or to the vehicles so transported;

(2) vehicles operated under dealers' licenses or plates;

(3) vehicles registerable under any other provisions of law;

(4) any person not issued a driveaway or towaway permit.

History: En. Sec. 6-406, Ch. 197, L. 1965; R.C.M. 1947, 32-3406.

61-4-307. Display of plates. A vehicle or combination of vehicles transported over the highways of the state by a permitholder shall display in a prominent position thereon the distinctive transit plates or devices, the towing vehicle displaying such on the front thereof and a towed vehicle on the rear thereof.

History: En. Sec. 3, Ch. 133, L. 1953; Sec. 53-632, R.C.M. 1947; amd. and redes. 32-3407 by Sec. 185, Ch. 316, L. 1974; R.C.M. 1947, 32-3407.

61-4-308. List of holders of permits and transit plates. The department of justice shall furnish the department of transportation a list of the permitholders and of the transit plates or devices issued to those permitholders.

History: En. Sec. 4, Ch. 133, L. 1953; Sec. 53-633, R.C.M. 1947; amd. and redes. 32-3408 by Sec. 186, Ch. 316, L. 1974; R.C.M. 1947, 32-3408; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Special mobile equipment — identification plate, 61-3-431.

61-4-309. Repealed. Sec. 315, Ch. 42, L. 1997.

History: En. Sec. 1, Ch. 182, L. 1955; amd. Sec. 1, Ch. 126, L. 1965; amd. Sec. 2, Ch. 18, L. 1974; R.C.M. 1947, 53-119.1(part).

61-4-310. Single movement permit — fee — limitation — county treasurer to issue. (1) (a) A vehicle, subject to license under this title, or a mobile home may be moved unladen upon the highways of this state from a point within the state to a point of destination. The county treasurer at the point of the origin of the movement shall issue a special permit for the vehicle in lieu of fees required under 61-3-321 and part 2 of chapter 10 of this title upon application presented to the county treasurer in a form provided by the department, upon exhibiting to the county treasurer proof of ownership and evidence that the personal property taxes on the vehicle, if any are due, have been paid, and upon payment of a fee of $5. The permit is not in lieu of fees and permits required under 61-4-301 and 61-4-302.

(b) For purposes of this section, a mobile home is considered unladen when all items are removed except the equipment originally installed by the manufacturer and the personal effects of the owners.

(2) The permit is for the transit of the vehicle or mobile home only, and the vehicle or mobile home may not at the time of the transit be used for the transportation of any persons, except the driver, or any property for compensation or otherwise and is for one transit only between the points of origin and destination as set forth in the application and shown on the permit.

(3) A junk vehicle being driven or towed to a motor vehicle wrecking facility or a motor vehicle graveyard for disposal is exempt from the provisions of this section. The definitions in 75-10-501 apply to this subsection.

History: En. Sec. 1, Ch. 182, L. 1955; amd. Sec. 1, Ch. 126, L. 1965; amd. Sec. 2, Ch. 18, L. 1974; R.C.M. 1947, 53-119.1(part); amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 79, L. 1993; amd. Sec. 249, Ch. 42, L. 1997.

Cross-References

Duties of County Treasurer, 7-6-2111.

Certificate of ownership, 61-3-202.

61-4-311. Fees credited to general road fund. All fees collected under 61-4-310 shall belong to the general road fund of the county and be for the use and benefit of that fund.

History: En. Sec. 2, Ch. 182, L. 1955; R.C.M. 1947, 53-119.2.

Cross-References

City and county road funds, 7-14-2512.

Part 4

Monopolies in Financing Sale of Motor Vehicles

Part Cross-References

U.C.C. — sales, Title 30, ch. 2.

Unfair competition in sales, 30-14-207.

Loans of money — interest rates, Title 31, ch. 1, part 1.

Retail installment sales — finance charge limitation, 31-1-241.

61-4-401. Declaration of policy. It is hereby declared to be the policy of this state that free and unrestrained competition shall prevail in the business of financing the purchase or sale of motor vehicles.

History: En. Sec. 1, Ch. 144, L. 1937; R.C.M. 1947, 51-201.

61-4-402. Definitions. (1) "Finance company" or "finance agency" means a person, firm, association, corporation, or other organization engaged in the business of buying, selling, assigning, dealing, financing, or acquiring conditional contracts of sale or engaged in the business of purchasing or acquiring promissory notes or any other form or evidences of indebtedness of sale, either secured by vendor's lien, conditional bill of sale, chattel mortgage, or leases arising out of the sale of motor vehicles in this state.

(2) The term "manufacturer" means a person, firm, corporation, partnership, or association engaged either directly or indirectly in the manufacture or wholesale distribution of motor vehicles.

(3) The term "motor vehicle", as used in this part, includes a personal watercraft as defined in 23-2-502, a snowmobile as defined in 23-2-601, and an off-highway vehicle as defined in 23-2-801.

(4) The terms "sell", "sold", "buy", and "purchase", as used in this part, include exchange, barter, gift, and offer or contract to sell or buy.

(5) The term "wholesale distributor" means a person, firm, association, corporation, or other organization engaged directly or indirectly in the sale or distribution of motor vehicles to agents or to dealers.

History: En. Sec. 2, Ch. 144, L. 1937; R.C.M. 1947, 51-202(b) thru (d), (f); amd. Sec. 9, Ch. 384, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 384 inserted definition of motor vehicle; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Retail installment sales — sales finance company defined, 31-1-202.

Manufacturer defined, 61-1-316.

Licensing of new motor vehicle manufacturers, distributors, and importers, Title 61, ch. 4, part 2.

61-4-403. Certain financing agreements prohibited. It is unlawful for any manufacturer or wholesale distributor of motor vehicles to sell or enter into a contract for the sale of motor vehicles to any motor vehicle dealer on the condition or under an agreement, expressed or implied, that the dealer will finance the purchase or sale of any motor vehicle or vehicles only through a designated finance company or finance agency. Any such condition, agreement, or understanding is against the public policy of the state, and such condition, agreement, or understanding is unlawful, void, and unenforceable, either at law or equity.

History: En. Sec. 3, Ch. 144, L. 1937; R.C.M. 1947, 51-203; amd. Sec. 52, Ch. 421, L. 1979.

Cross-References

Contracts in restraint of trade generally void, 28-2-703.

Unlawful restraint of trade, 30-14-205.

61-4-404. Threats prima facie evidence. Any threat, expressed or implied, made directly or indirectly to any dealer by any manufacturer, or by any person who is engaged in the business of financing the purchase or sale of motor vehicles and is affiliated with or controlled by any manufacturer, that such manufacturer will cease to sell or will terminate or refuse to enter into a contract to sell motor vehicles to such dealer unless such dealer finances the purchase or sale of any such motor vehicle or vehicles only with or through a designated person, shall be presumed to be made at the direction of and with the authority of such manufacturer and shall be prima facie evidence of the fact that such manufacturer has sold or intends to sell such motor vehicle or vehicles on the condition or under the agreement prohibited by the provisions of this part.

History: En. Sec. 4, Ch. 144, L. 1937; R.C.M. 1947, 51-204.

Cross-References

Evidence, Title 26.

When apparent consent not free, 28-2-401.

61-4-405. Penalty. Any person who shall violate any of the provisions of this part and any employee, agent, or officer of any such person who shall participate in any manner in making, enforcing, or performing or in aiding or abetting in the performance of any such contract, condition, agreement, or understanding shall be deemed guilty of a crime and upon conviction thereof shall be punished for each offense by a fine of not more than $5,000 or by imprisonment in the penitentiary for not more than 5 years or in the county jail for not more than 1 year or by both such fine and imprisonment.

History: En. Sec. 5, Ch. 144, L. 1937; R.C.M. 1947, 51-205.

Cross-References

Classification of offenses, 45-1-201.

Felony defined, 45-2-101.

61-4-406. Suit for injury to business or property. In addition to the criminal and civil penalties herein provided, any person who shall be injured in his business or property by any other person or corporation or association or partnership by reason of anything forbidden or declared to be unlawful by this part may sue therefor in any court having jurisdiction thereof in the county where the defendant resides or is found or any agent resides or is found or where service may be obtained, without respect to the amount in controversy, and recover twofold the damages by him sustained and the costs of suit. Whenever it shall appear to the court before which any proceedings under this part may be pending that the ends of justice require that other parties shall be brought before the court, the court may cause them to be made parties defendant and summoned, whether they reside in the county where such action is pending or not.

History: En. Sec. 6, Ch. 144, L. 1937; R.C.M. 1947, 51-206.

Cross-References

Costs, Title 25, ch. 10.

Jurisdiction of persons, Rule 4B, M.R.Civ.P. (see Title 25, ch. 20).

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Joinder of persons needed for just adjudication, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

When exemplary damages allowed, 27-1-221.

Part 5

New Motor Vehicle Warranties — Remedies

Part Cross-References

U.C.C. — sales — warranty provisions, 30-2-312 through 30-2-318.

Seller's responsibilities, Title 30, ch. 11, part 2.

"Consumer Protection Act", Title 30, ch. 14, part 1.

61-4-501. Definitions. For purposes of this part, the following definitions apply:

(1) "Collateral charge" means all governmental charges, including but not limited to sales tax, property tax, license and registration fees, and fees in lieu of tax.

(2) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle that has not been brought into nonconformity as the result of abuse, neglect, or unauthorized modifications or alterations by the purchaser, any person to whom the motor vehicle is transferred during the duration of an express warranty applicable to the motor vehicle, or any other person entitled by the terms of the warranty to the benefits of its provisions.

(3) "Incidental damage" means incidental and consequential damage as defined in 30-2-715.

(4) "Manufacturer" has the meaning applied to that word in 61-4-201.

(5) "Motor vehicle" means a vehicle, including the nonresidential portion of a motor home as defined in 61-1-130, propelled by its own power, designed primarily to transport persons or property upon the public highways, and sold in this state. The term does not include a truck with 10,000 pounds or more gross vehicle weight rating or a motorcycle as defined in 61-1-105. Motor vehicle does not include components, systems, fixtures, appliances, furnishings,

accessories, and features that are designed, used, and maintained primarily for residential purposes.

(6) "Reasonable allowance for use" is an amount directly attributable to use of the motor vehicle by the consumer and any previous consumers prior to the first written notice of the nonconformity to the manufacturer or its agent and during any subsequent period when the vehicle is not out of service because of nonconformity. The reasonable allowance for use shall be computed by multiplying the total contract price of the vehicle by a fraction having as its denominator 100,000 and having as its numerator the number of miles that the vehicle traveled prior to the manufacturer's acceptance of its return.

(7) "Warranty period" means the period ending 2 years after the date of the original delivery to the consumer of a new motor vehicle or during the first 18,000 miles of operation, whichever is earlier.

History: En. Sec. 1, Ch. 144, L. 1983; amd. Sec. 1, Ch. 744, L. 1985; amd. Sec. 2, Ch. 300, L. 1991.

61-4-502. Notice — warranty enforceable after warranty period — when. (1) If a consumer notifies in writing the manufacturer or its agent during the warranty period that a new motor vehicle does not conform to all applicable express warranties, the repairs necessary to conform the new motor vehicle to the express warranties shall be made by or at the expense of the warrantor, regardless of the expiration of the warranty period after notification of nonconformity is given by the consumer.

(2) The warranty period of an express warranty is extended to equal the time that repair services are not available because of war or invasion or because of strike or fire, flood, or other natural disaster. The presumption provided herein may not apply against a manufacturer who has not received prior written notification from or on behalf of the consumer and has not had an opportunity to cure the alleged defect.

(3) The manufacturer must clearly and conspicuously disclose to the consumer in the warranty or owner's manual that written notification of a nonconformity is required before a consumer may be eligible for a refund or replacement of the vehicle. The manufacturer must include with the warranty or owner's manual the name and address where the written notification must be sent.

History: (1)En. Sec. 2, Ch. 144, L. 1983; (2)En. Sec. 5, Ch. 144, L. 1983; amd. Sec. 2, Ch. 744, L. 1985.

Cross-References

Construction of terms of notice, 1-4-108.

Agency, Title 28, ch. 10.

61-4-503. Replacement for nonconformity to warranty. (1) If after a reasonable number of attempts the manufacturer or its agent or authorized dealer is unable, during the warranty period, to conform the new motor vehicle to any applicable express warranty by repairing or correcting any defect or condition that substantially impairs the use and market value or safety of the motor vehicle to the consumer, the manufacturer shall replace it with a new motor vehicle of the same model and style and of equal value, unless for reasons of lack of availability such replacement is impossible, in which case the manufacturer shall replace it with a vehicle of comparable market value.

(2) As an alternative to replacement, the manufacturer may accept return of the new motor vehicle from the consumer upon refund to him of the full purchase price, plus reasonable collateral charges and incidental damages, less a reasonable allowance for the consumer's use of the motor vehicle. The refund shall be paid to the consumer and to a lienholder, if any, in proportion to their interests.

History: En. Sec. 3, Ch. 144, L. 1983; amd. Sec. 3, Ch. 744, L. 1985.

Cross-References

Security interests, Title 30, ch. 9.

Liens, Title 71, ch. 3.

61-4-504. Reasonable number of attempts — presumption. A reasonable number of attempts to conform a new motor vehicle to the applicable express warranties is presumed to have been made for purposes of 61-4-503(1) if:

(1) the same nonconformity has been subject to repair four or more times by the manufacturer or its agent or authorized dealer during the warranty period but the nonconformity continues to exist; or

(2) the vehicle is out of service because of nonconformity for a cumulative total of 30 or more business days during the warranty period after notification of the manufacturer, agent, or dealer.

History: En. Sec. 4, Ch. 144, L. 1983.

Cross-References

Presumptions, Title 26, ch. 1, part 6.

61-4-505. Dealer exemption — liability to manufacturer. (1) Nothing in this part imposes any liability on a dealer or creates a cause of action by a consumer against a dealer under 61-4-503.

(2) A dealer is not liable to a manufacturer for any refunds or vehicle replacements in the absence of evidence indicating that repairs made by the dealer were carried out in a manner inconsistent with the manufacturer's instructions.

History: En. Sec. 8, Ch. 144, L. 1983; amd. Sec. 4, Ch. 744, L. 1985.

61-4-506. Provisions nonexclusive — applicability of U.C.C. — defenses. (1) The provisions of this part do not limit the rights or remedies available to a consumer under any other law.

(2) All express warranties arising from the sale of a new motor vehicle are subject to the provisions of Title 30, chapter 2, part 3.

(3) It is an affirmative defense to a claim brought under this part that an alleged nonconformity does not substantially impair the use, market value, or safety of the vehicle or that the nonconformity is the result of abuse, neglect, or unauthorized modification or alteration of a motor vehicle by the consumer.

History: En. Sec. 6, Ch. 144, L. 1983; amd. Sec. 5, Ch. 744, L. 1985.

61-4-507. Exhaustion of remedies under federal law. The provisions of 61-4-503 are not applicable against a manufacturer who has established an informal dispute settlement procedure certified by the department of commerce to be in substantial compliance with the provisions of Title 16, Code of Federal Regulations, part 703, as those provisions read on October 1, 1983, unless the consumer has first resorted to that procedure without satisfaction.

History: En. Sec. 7, Ch. 144, L. 1983; amd. Sec. 6, Ch. 744, L. 1985.

61-4-508 through 61-4-510 reserved.

61-4-511. Manufacturer's dispute settlement procedure — certification — prohibited contents. (1) A manufacturer who has established an informal dispute settlement procedure under the provisions of Title 16, Code of Federal Regulations, part 703 (16 CFR, part 703), as those provisions read on October 1, 1983, shall submit a copy of the procedure to the department of commerce. The department of commerce shall issue a certificate of approval to a manufacturer whose procedure complies in all respects with such federal regulations and subsection (2). The department of commerce shall report to the department of justice all manufacturer's procedures certified. The department of commerce may issue subpoenas requiring the attendance of witnesses and the production of records, documents, or other evidence necessary to it in an investigation related to the certification of a manufacturer's informal dispute settlement procedure.

(2) A manufacturer's informal dispute settlement procedure must afford the consumer or his representative an opportunity to appear and present evidence in Montana at a location reasonably convenient to the consumer and, further, may not include any practices that:

(a) delay a decision in any dispute beyond 60 days after the date on which the consumer initially resorts to the dispute settlement procedure;

(b) delay performance of remedies awarded in a settlement beyond 10 days after a decision, except that a manufacturer may have 30 days following the date of decision to replace a motor vehicle or make refund to the consumer as provided in 61-4-503;

(c) require the consumer to make the vehicle available for inspection by a manufacturer's representative more than once;

(d) fail to consider in decisions any remedies provided by this part; or

(e) require the consumer to take any action or assume any obligation not specifically authorized under the federal regulations referred to in subsection (1).

History: En. Sec. 7, Ch. 744, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.

Cross-References

Subpoenas and witnesses, Title 26, ch. 2.

61-4-512. Annual audit — revocation or suspension of certification. (1) A manufacturer establishing an informal dispute resolution procedure shall file with the department of commerce a copy of the annual audit required under Title 16, Code of Federal Regulations, part 703 (16 CFR, part 703), as those provisions read on October 1, 1983, along with any additional information the department of commerce may require, including the number of refunds and replacements made by the manufacturer during the period audited.

(2) The department of commerce may, after notice and hearing as provided in Title 2, chapter 4, suspend or revoke the certification of a manufacturer's informal dispute resolution procedure upon a finding that the procedure is being used to create hardship to consumers. The department of commerce shall notify the department of justice of any revocation or suspension of a certification. The department of justice may consider the revocation or suspension in licensing manufacturers under Title 61, chapter 4, part 2.

History: En. Sec. 8, Ch. 744, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.

61-4-513 and 61-4-514 reserved.

61-4-515. Arbitration procedure. (1) The department of commerce shall provide an independent forum and arbitration procedure for the settlement of disputes between consumers and manufacturers of motor vehicles that do not conform to all applicable warranties under the provisions of this part. The procedure must conform to Title 27, chapter 5. All arbitration shall take place in Montana at a place reasonably convenient to the consumer.

(2) Except as provided in 61-4-520, a consumer owning a motor vehicle that fails to conform to all applicable warranties may bring a grievance before an arbitration panel only if the manufacturer of the motor vehicle has not established an informal dispute settlement procedure which has been certified by the department of commerce under 61-4-511.

History: En. Sec. 10, Ch. 744, L. 1985; amd. Sec. 23, Ch. 744, L. 1985.

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

61-4-516. Composition of arbitration panel. An arbitration panel hearing a grievance under this part must consist of three members. One member must be chosen by the consumer, one member must be chosen by the manufacturer, and one member must be chosen by mutual agreement of the parties. The department of commerce may maintain a list of persons willing to serve on panels from which the third member may be chosen.

History: En. Sec. 11, Ch. 744, L. 1985.

61-4-517. Implementation of arbitration. (1) A consumer may initiate a request for arbitration by filing a notice with the department of commerce. The consumer shall file, on a form prescribed by the department of commerce, any information considered relevant to the resolution of the dispute and shall return the form, along with a $50 filing fee, within 5 days after receiving it. The complaint form must offer the consumer the choice of presenting any subsequent testimony orally or in writing, but not both.

(2) The department of commerce shall determine whether the complaint alleges the violation of any applicable warranty under this part. If the department of commerce determines that a complaint does not allege a warranty violation, it must refund the filing fee.

(3) Upon acceptance of a complaint, the department of commerce shall notify the manufacturer of the filing of a request for arbitration and shall obtain from the manufacturer, on a form prescribed by the department of commerce, any information considered relevant to the resolution of the dispute. The manufacturer must return the form within 15 days of receipt, with a filing fee of $250.

(4) Fees collected under this section shall be deposited in a special revenue fund for the use of the department of commerce in administering this part.

(5) The manufacturer's fee provided in subsection (3) is due only if the department of commerce arbitration procedures are utilized.

History: En. Sec. 12, Ch. 744, L. 1985.

61-4-518. Arbitration — role of department of commerce — expert. (1) The department of commerce shall investigate, gather, and organize all information necessary for a fair and timely decision in each dispute. The department of commerce may, on behalf of the arbitration panel, issue subpoenas to compel the attendance of witnesses and the production of documents, papers, and records relevant to the dispute.

(2) If requested by the panel, the department of commerce may forward a copy of all written testimony and documentary evidence to an independent technical expert certified by the national institute of automotive excellence. The expert may review the material and be available to advise and consult with the panel. The expert may sit as a nonvoting member of the panel whenever oral testimony is presented. The department of justice may suggest an expert at the request of the department of commerce.

History: En. Sec. 13, Ch. 744, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.

61-4-519. Action by arbitration panel — decision. (1) The arbitration panel shall, as expeditiously as possible, but not later than 60 days after the department of commerce has accepted a complaint, render a fair decision based on the information gathered and disclose its findings and its reasoning to the parties.

(2) The decision shall provide appropriate remedies, including but not limited to:

(a) repair of the vehicle;

(b) replacement of the vehicle with an identical vehicle or a comparable vehicle acceptable to the consumer;

(c) refund as provided in 61-4-503(2);

(d) any other remedies available under the applicable warranties or 15 U.S.C. 2301 through 2312, as in effect on October 1, 1983; or

(e) reimbursement of expenses and costs to the prevailing party.

(3) The decision shall specify a date for performance and completion of all awarded remedies. The department of commerce shall contact the prevailing party within 10 working days after the date for performance to determine whether performance has occurred. The parties shall act in good faith in abiding by any decision. In addition, if the decision is not accepted, the parties shall follow the provisions of Title 27, chapter 5. If it is determined by the court that the appellant has acted without good cause in bringing an appeal of an award, the court, in its discretion, may grant to the respondent his costs and reasonable attorney fees.

History: En. Sec. 14, Ch. 744, L. 1985; amd. Sec. 23, Ch. 744, L. 1985.

61-4-520. Nonconforming procedure — arbitration de novo. A consumer injured by the operation of any procedure that does not conform with procedures established by a manufacturer pursuant to 61-4-511 and the provisions of Title 16, Code of Federal Regulations, part 703, as in effect on October 1, 1983, may appeal any decision rendered as the result of such a procedure by requesting arbitration de novo of the dispute by a department of commerce panel. Filing procedures and fees for appeals must be the same as those required in 61-4-515 through 61-4-517. The findings of the manufacturer's informal dispute settlement procedure are admissible in evidence at the department of commerce arbitration panel hearing and in any civil action arising out of any warranty obligation or matter related to the dispute.

History: En. Sec. 16, Ch. 744, L. 1985.

61-4-521 through 61-4-524 reserved.

61-4-525. Notice on resale of replaced vehicle. A motor vehicle which is returned to the manufacturer and which requires replacement or refund may not be sold in the state without a clear and conspicuous written disclosure of the fact that the vehicle was returned. The department of justice may prescribe by rule the form and content of the disclosure statement and a procedure by which the disclosure may be removed upon a determination that the vehicle is no longer defective.

History: En. Sec. 9, Ch. 744, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.

61-4-526. Records of disputes. The department of commerce shall maintain records of each dispute as it determines, including an index of disputes by brand name and model. The department of commerce shall, at intervals of no more than 6 months, compile and maintain statistics indicating the record of compliance with arbitration decisions and the number of refunds or replacements awarded. A copy of the statistical summary must be filed with the department of justice and must be considered by it in determining the issuance of any manufacturer license required under Title 61, chapter 4, part 2.

History: En. Sec. 15, Ch. 744, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.

61-4-527 through 61-4-530 reserved.

61-4-531. Nondelegable. The liabilities and obligations contained in this part may not be delegated or assigned to or assumed by any other person or entity.

History: En. Sec. 17, Ch. 744, L. 1985.

61-4-532. Rulemaking. The department of commerce may adopt rules to implement the provisions of this part.

History: En. Sec. 18, Ch. 744, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

61-4-533. Penalty. A violation of any provision of this part is an unfair or deceptive trade practice under Title 30, chapter 14, part 2, and the penalties provided in 30-14-224(1) apply.

History: En. Sec. 19, Ch. 744, L. 1985.

CHAPTER 5

DRIVERS' LICENSES

Part 1 — Licensing Provisions

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Chapter Cross-References

Driver's license defined, 61-1-136.

Part 1
Licensing Provisions

61-5-101. Driver licensing responsibilities of department. (1) The department shall maintain a permanent place of business at the state capital and shall provide the necessary staff, facilities, and equipment for the purpose of providing driver's license services as required by this part.

(2) The department shall provide an examiner to administer a commercial driver's license examination in any county of the state if the examination is previously scheduled through the department.

History: En. Sec. 1, Ch. 267, L. 1947; amd. Sec. 1, Ch. 141, L. 1951; amd. Sec. 1, Ch. 101, L. 1957; amd. Sec. 1, Ch. 42, L. 1969; R.C.M. 1947, 31-117; amd. Sec. 53, Ch. 421, L. 1979; amd. Sec. 1, Ch. 451, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 164, L. 1997.

Cross-References

Continuity of government, Art. III, sec. 2, Mont. Const.

Duties of Department of Justice — records, 61-3-101.

61-5-102. Drivers to be licensed. (1) Except as provided in 61-5-104, a person may not drive a motor vehicle upon a highway in this state unless the person has a valid Montana driver's license. A person may not receive a Montana driver's license until the person surrenders to the department all valid driver's licenses issued by any other jurisdiction. A person may not have in the person's possession or under the person's control more than one valid Montana driver's license at any time.

(2) (a) A license is not valid for the operation of a motorcycle or quadricycle unless the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement". A motorcycle endorsement is required for the operation of a quadricycle.

(b) A license is not valid for the operation of a commercial vehicle unless the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "commercial driver's license".

(3) When a city or town requires a licensed driver to obtain a local driving license or permit, a license or permit may not be issued unless the applicant presents a state driver's license valid under the provisions of this chapter.

(4) A person operating a bicycle defined in 61-1-123(2) must have in the person's possession at all times when operating the bicycle a valid Montana driver's license.

History: En. Sec. 9, Ch. 267, L. 1947; amd. Sec. 1, Ch. 37, L. 1951; amd. Sec. 1, Ch. 79, L. 1957; amd. Sec. 1, Ch. 51, L. 1959; amd. Sec. 1, Ch. 211, L. 1961; R.C.M. 1947, 31-125(a) thru (c); (4)En. Sec. 9, Ch. 508, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 5, Ch. 443, L. 1987; amd. Sec. 3, Ch. 309, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 309 in (1) deleted former third sentence that read: "All surrendered licenses shall be returned by the department to the issuing department together with information that the licensee is not licensed in this state" and in third sentence after "have" inserted "in the person's possession or under the person's control" and after "valid" inserted "Montana"; inserted

(2)(a) regarding validity of motorcycle or quadricycle license; inserted (2)(b) regarding commercial licenses; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

Cross-References

Municipal regulation of motor vehicles, 7-14-4103.

General licensing power of municipalities, 7-21-4101.

61-5-103. Residency requirement. (1) A person who has resided in Montana for more than 120 consecutive days is considered to be a resident for the purpose of being licensed to operate a motor vehicle and must be licensed under the laws of Montana before operating a motor vehicle.

(2) A person who operates a commercial motor vehicle in Montana is considered to be a resident of Montana for the purpose of being licensed to operate a commercial motor vehicle if the person has resided in Montana for more than 30 consecutive days and must be licensed under the laws of Montana before operating any commercial motor vehicle.

History: En. Sec. 9, Ch. 267, L. 1947; amd. Sec. 1, Ch. 37, L. 1951; amd. Sec. 1, Ch. 79, L. 1957; amd. Sec. 1, Ch. 51, L. 1959; amd. Sec. 1, Ch. 211, L. 1961; R.C.M. 1947, 31-125(d); amd. Sec. 54, Ch. 421, L. 1979; amd. Sec. 9, Ch. 378, L. 1989; amd. Sec. 4, Ch. 309, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 309 in (1) substituted "120 consecutive days" for "90 days"; in (2) after "30" inserted "consecutive"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

Cross-References

Residence — rules for determining, 1-1-215.

Commercial motor vehicle defined, 61-1-134.

61-5-104. Exemptions. (1) The following persons are exempt from licensure under this chapter:

(a) a person who is a member of the armed forces of the United States while operating a motor vehicle owned by or leased to the United States government and being operated on official business;

(b) a person who is a member of the armed forces of the United States on active duty in Montana who holds a valid license issued by another state and the spouse of the person who holds a valid license issued by another state and who is not employed in Montana, except as a member of the armed forces. If a spouse of a member of the armed forces becomes gainfully employed in Montana, the spouse must be licensed, as required by 61-5-102, within 90 days of becoming employed.

(c) a person on active duty in the armed forces of the United States and in immediate possession of a valid license issued to that person in a foreign country by the armed forces of the United States, for a period of 45 days from the date of the person's return to the United States;

(d) a person who temporarily drives, operates, or moves a road machine, farm tractor, or implement of husbandry for use in intrastate commerce on a highway;

(e) a person who is a locomotive engineer, assistant engineer, conductor, brakeman, railroad utility person, or other member of the crew of a railroad locomotive or train being operated upon rails, including operation on a railroad crossing a public street, road, or highway. A person employed as described in this subsection is not required to display a driver's license to a law enforcement officer in connection with the operation of a railroad locomotive or train within Montana.

(f) a person who temporarily drives, operates, or moves an off-highway vehicle, as defined in 23-2-801, on a forest development road in this state, as defined in 61-8-110, that has been designated and approved for off-highway vehicle use by the United States forest service if the person:

(i) is under 16 years of age but at least 12 years of age; and

(ii) at the time of driving, operating, or moving the off-highway vehicle, has in the person's possession a certificate showing the successful completion of an off-highway vehicle safety education course approved by the department of fish, wildlife, and parks and is in the physical presence of a person who possesses a license issued under this chapter.

(2) A nonresident who is at least 15 years of age and who is in immediate possession of a valid operator's license issued to the nonresident by the nonresident's home state or country may operate a motor vehicle, except a commercial motor vehicle, in this state.

(3) A nonresident not otherwise exempt from the licensing requirements of 49 CFR, part 383, and in immediate possession of a valid commercial driver's license issued to the nonresident by the nonresident's home state or country may operate a commercial motor vehicle in this state.

(4) A nonresident who is at least 18 years of age, whose home state or country does not require the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than 90 days in any calendar year, if the motor vehicle is registered in the home state or country of the nonresident.

(5) A driver's license issued under this chapter to a person who enters the United States armed forces, if valid and in effect at the time that the person enters the service, continues in effect so long as the service continues, unless the license is suspended, revoked, or canceled for a cause as provided by law, and for up to 30 days following the date on which the licensee is honorably separated from the service. During the 30-day period, the license is valid only when the license and the licensee's discharge, separation, leave, or furlough papers are in the licensee's immediate possession.

History: En. Sec. 10, Ch. 267, L. 1947; amd. Sec. 1, Ch. 95, L. 1955; amd. Sec. 1, Ch. 137, L. 1961; amd. Sec. 1, Ch. 133, L. 1969; R.C.M. 1947, 31-126; amd. Sec. 1, Ch. 454, L. 1985; amd. Sec. 6, Ch. 443, L. 1987; amd. Sec. 1, Ch. 536, L. 1991; amd. Sec. 3, Ch. 53, L. 1995; amd. Sec. 3, Ch. 105, L. 1997; amd. Sec. 2, Ch. 95, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 95 inserted (1)(f) establishing criteria for when a person under 16 years of age but at least 12 years of age may operate an off-highway vehicle on a forest development road without a driver's license. Amendment effective October 1, 1999.

Cross-References

Servicemen, servicewomen, and veterans, Art. II, sec. 35, Mont. Const.

Farm tractor defined, 61-1-109.

Road tractor defined, 61-1-110.

Implement of husbandry defined, 61-1-121.

61-5-105. Who may not be licensed. The department may not issue a license under this chapter to a person:

(1) who is under 16 years of age unless:

(a) the person is at least 15 years of age and has passed a driver's education course approved by the department and the superintendent of public instruction; or

(b) the person is at least 13 years of age and, because of individual hardship, to be determined by the department, needs a restricted license;

(2) whose license or driving privilege is currently suspended or revoked in this or any state;

(3) who is addicted to the use of alcohol or narcotic drugs;

(4) who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who, at the time of application, has not been restored to competency by the methods provided by law;

(5) who is required by this chapter to take an examination;

(6) who has not deposited proof of financial responsibility when required under the provisions of chapter 6 of this title;

(7) who has any condition characterized by lapse of consciousness or control, either temporary or prolonged, that is or may become chronic. However, the department may in its discretion issue a license to an otherwise qualified person suffering from a condition if the afflicted person's attending physician attests in writing that the person's condition has stabilized and would not be likely to interfere with that person's ability to operate a motor vehicle safely and, if a commercial driver's license is involved, the person is physically qualified to operate a commercial motor vehicle under applicable state or federal regulations; or

(8) who lacks the functional ability, due to a physical or mental disability or limitation, to safely operate a motor vehicle on the highway.

History: En. Sec. 11, Ch. 267, L. 1947; amd. Sec. 1, Ch. 60, L. 1955; amd. Sec. 1, Ch. 227, L. 1965; amd. Sec. 14, Ch. 94, L. 1973; amd. Sec. 1, Ch. 178, L. 1973; R.C.M. 1947, 31-127; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 7, Ch. 443, L. 1987; amd. Sec. 1, Ch. 364, L. 1995; amd. Sec. 5, Ch. 309, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 309 inserted (8) prohibiting department from issuing license to person lacking functional ability to safely operate motor vehicle on the highway; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

Cross-References

Confidentiality of tax records, 15-30-303.

Traffic education, Title 20, ch. 7, part 5.

Report to Department of Justice by physician, 37-2-311.

Suspension defined, 61-1-503.

Revocation defined, 61-1-504.

Financial responsibility, Title 61, ch. 6, part 1.

Carriers of passengers, Title 69, ch. 11, part 2.

Carriers of property, Title 69, ch. 11, part 4.

61-5-106. Instruction permits — traffic education learner licenses and permits — temporary licenses. (1) The department may issue an instruction permit to a person satisfying the age requirements specified in 61-5-105(1) after the applicant has successfully passed the knowledge test and the vision examination as provided in 61-5-110. An instruction permit entitles the permittee, while in immediate possession of the permit and accompanied by a licensed driver seated beside the permittee, to drive a motor vehicle upon the public highways for a period of 6 months from the date the fees required in 61-5-111 are paid.

(2) The department may issue a traffic education learner license to any person who is at least 14 ½ years of age and who has successfully completed or is successfully participating in a traffic education course approved by the department and the superintendent of public instruction. A traffic education learner license entitles the licensee to operate a motor vehicle only when accompanied by an approved instructor or licensed parent or guardian and may be restricted to specific times or areas.

(3) (a) An instructor of a traffic education program approved by the department and by the superintendent of public instruction may issue a traffic education permit that is effective for a school year or more restricted period to an applicant who is enrolled in a traffic education program approved by the department and who meets the age requirements specified in 20-7-503.

(b) When in immediate possession of the traffic education permit, the permittee may operate on a designated highway or within a designated area:

(i) a motor vehicle when an approved instructor is seated beside the permittee; or

(ii) a motorcycle or quadricycle when under the immediate and proximate supervision of an approved instructor.

(4) The department may in its discretion issue a temporary driver's permit to an applicant for a driver's license permitting the applicant to operate a motor vehicle while the department is completing its investigation and determination of all facts relative to the applicant's right to receive a driver's license. The temporary driver's permit must be in the permittee's immediate possession while operating a motor vehicle, and it is invalid when the applicant's license has been issued or for good cause has been refused.

(5) The department may in its discretion issue a temporary commercial driver's license to an applicant permitting the applicant to operate a commercial motor vehicle while the department is completing its investigation and determination of all facts relative to the applicant's right to receive a commercial driver's license. The temporary license must be in the applicant's immediate possession while operating a commercial motor vehicle and is invalid when the applicant's license has been issued or for good cause has been refused.

(6) The department may in its discretion issue a temporary medical assessment and rehabilitation driving permit as provided in 61-5-120.

History: En. Sec. 13, Ch. 267, L. 1947; amd. Sec. 1, Ch. 120, L. 1961; amd. Sec. 1, Ch. 55, L. 1969; amd. Sec. 1, Ch. 271, L. 1973; amd. Sec. 1, Ch. 19, L. 1974; R.C.M. 1947, 31-129; amd. Sec. 1, Ch. 173, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 30, Ch. 516, L. 1985; amd. Sec. 8, Ch. 443, L. 1987; amd. Sec. 7, Ch. 195, L. 1993; amd. Sec. 2, Ch. 364, L. 1995; amd. Sec. 6, Ch. 309, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 309 inserted (6) authorizing department to issue temporary medical assessment and rehabilitation driving permit. Amendment effective October 1, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

Cross-References

Traffic education, Title 20, ch. 7, part 5.

61-5-107. *(Temporary)* **Application for license, instruction permit, or motorcycle endorsement.** (1) Each application for an instruction permit, driver's license, or motorcycle endorsement must be made upon a form furnished by the department. Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state must be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Each application must include the full legal name, date of birth, sex, residence address of the applicant[, and if the application is for a commercial driver's license, social security number], must include a brief description of the applicant, and must include a statement that allows the department to determine if:

(a) the applicant has previously been licensed as a driver or commercial vehicle operator, and, if so, when and by what state or country;

(b) any commercial driver's license has ever been suspended or revoked;

(c) an application has ever been denied and, if so, the date of and reason for suspension, revocation, or denial;

(d) the applicant has a physical or mental disability, limitation, or condition that impairs or may impair the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(e) the applicant relies upon, or intends to rely upon, any adaptive equipment or operational restrictions to attain the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway, including the nature of the equipment or restrictions.

[(3) The department shall keep the applicant's social security number from this source confidential, except that the number may be used for purposes of subtitle VI of Title 49 of the U.S.C. or as otherwise permitted by state law administered by the department and may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(4) When application is received from an applicant previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from the previous licensing jurisdiction. The driving record may be transmitted manually or by electronic medium. When received, the driving records become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance. *(Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)*

61-5-107. *(Effective October 1, 2000)* **Application for license, instruction permit, or motorcycle endorsement.** (1) Each application for an instruction permit, driver's license, or motorcycle endorsement must be made upon a form furnished by the department. Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state must be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Each application must include the full legal name, date of birth, sex, residence address of the applicant [and the applicant's social security number], must include a brief description of the applicant, and must include a statement that allows the department to determine if:

(a) the applicant has previously been licensed as a driver or commercial vehicle operator, and, if so, when and by what state or country;

(b) any commercial driver's license has ever been suspended or revoked;

(c) an application has ever been denied and, if so, the date of and reason for suspension, revocation, or denial;

(d) the applicant has a physical or mental disability, limitation, or condition that impairs or may impair the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(e) the applicant relies upon, or intends to rely upon, any adaptive equipment or operational restrictions to attain the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway, including the nature of the equipment or restrictions.

[(3) The department shall keep the applicant's social security number from this source confidential, except that the number may be used for purposes of subtitle VI of Title 49 of the U.S.C. or as otherwise permitted by state law administered by the department and may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(4) When application is received from an applicant previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from the previous licensing jurisdiction. The driving record may be transmitted manually or by electronic medium. When received, the driving records become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance. *(Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)*

History: En. Sec. 14, Ch. 267, L. 1947; amd. Sec. 1, Ch. 28, L. 1969; R.C.M. 1947, 31-130; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 31, Ch. 516, L. 1985; amd. Sec. 9, Ch. 443, L. 1987; amd. Sec. 1, Ch. 406, L. 1991; amd. Sec. 8, Ch. 195, L. 1993; amd. Sec. 3, Ch. 364, L. 1995; amd. Sec. 95, Ch. 552, L. 1997; amd. Sec. 2, Ch. 29, L. 1999; amd. Sec. 7, Ch. 309, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 29 in (2) substituted "and the applicant's" for "and if the application is for a commercial vehicle operator's license"; and made minor changes in style. Amendment effective October 1, 2000.

Chapter 309 deleted former second sentence in (1) that read: "A motorcycle endorsement is required for the operation of a quadricycle"; near beginning of (2) after "full" inserted "legal", substituted "commercial driver's license" for "commercial vehicle operator's license", and at end substituted "must include a statement that allows the department to determine if" for "state whether"; in (2)(b) substituted "driver's license" for "operator's license"; in (2)(c) substituted "denied" and "denial" for "refused" and "refusal"; inserted (2)(d) requiring statement for department to determine if applicant has physical or mental disability that may impair safe operation of vehicle; inserted (2)(e) requiring statement for department to determine if applicant relies upon adaptive equipment or operational restrictions for safe operation of vehicle; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 7, Ch. 29, L. 1999, provided: "(1) [Sections 2 and 3] [61-5-107 and 61-5-111] apply to driver's licenses issued on or after October 1, 2000.

(2) [Sections 4 and 5] [87-2-106 and 87-2-202] apply to license years beginning on or after March 1, 2000."

Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

Contingent Termination — Request for Federal Exemptions: Section 1, Ch. 27, L. 1999, revised sec. 104, Ch. 552, L. 1997, to contain the following contingent termination provisions and order that the department of public health and human services seek federal exemptions: "(1) [Sections 9, 11, 22 through 24, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate on the date of the suspension if the federal government suspends federal payments to this state for this state's child support enforcement program and for this state's program relating to temporary assistance to needy families because of this state's failure to enact law as required by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(2) [Sections 9, 11, 22 through 24, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate on the date that a final decision is rendered in federal court invalidating the child support provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(3) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that one of the following provisions is no longer required by federal law because of repeal of or amendment to federal statutes that require that provision, the provision terminates on the date the certification takes effect:

(a) [section 9] [40-5-922];

(b) [section 11] [40-5-924];

(c) [sections 22 through 24] [37-1-307, 40-1-107, and 40-4-105];

(d) [section 95] [61-5-107];

(e) the bracketed provisions in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116].

(4) If the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminates, the code commissioner is instructed to renumber subsections, adjust internal references, and correct grammar and arrangement." Amendment effective February 18, 1999.

Cross-References

Commercial driver's license defined, 61-1-135.

Disposition of fees, 61-3-108.

Driver License Compact, Title 61, ch. 5, part 4.

Headgear required for minor motorcycle riders, 61-9-417.

Records to be kept by Department of Justice, 61-11-102.

61-5-108. Application of minors — imputed liability. (1) The application of a person who is under 18 years of age for an instruction permit, driver's license, or medical assessment and rehabilitation driving permit must be signed and verified before a person authorized to administer oaths or an employee of the department by a parent of the applicant or, if none is available, by some other responsible adult who is willing to assume the obligation imposed under this chapter upon a person signing the application of a minor.

(2) Any negligence or willful misconduct of a minor who is under 18 years of age when driving a motor vehicle upon a highway must be imputed to a person who has signed the application of the minor for an instruction permit, driver's license, or medical and rehabilitation driving permit. The person who signs the application is jointly and severally liable with the minor for any damages caused by the negligence or willful misconduct unless a motor vehicle liability policy, as provided for in chapter 6 of this title, covering the minor is in effect, in which case there is no imputed liability as described in this section.

History: En. Sec. 15, Ch. 267, L. 1947; amd. Sec. 1, Ch. 140, L. 1961; R.C.M. 1947, 31-131; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 10, Ch. 443, L. 1987; amd. Sec. 2, Ch. 419, L. 1991; amd. Sec. 8, Ch. 309, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 309 in (1) after "license" inserted "or medical assessment and rehabilitation driving permit"; in middle of (2) after "minor for" substituted "an instruction permit, driver's license, or medical and rehabilitation driving permit" for "permit or license"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

Officers who may administer oaths, 1-6-101.

Multiple defendants jointly and severally liable, 27-1-703.

Liability of minor for own torts, 27-1-711.

Minor defined, 41-1-101.

Child labor, Title 41, ch. 2, part 1.

Permitting unauthorized minor to drive, 61-5-304.

Responsibility of vehicle users and owners, Title 61, ch. 6.

Guardians of minors, Title 72, ch. 5, part 2.

61-5-109. Release from liability. Any person who has signed the application of a minor for a license may thereafter file with the department a verified written request that the license of said minor so granted be canceled. Thereupon the department shall cancel the license of said minor and the person who signed the application of such minor shall be relieved from the liability imposed under this chapter by reason of having signed such application on account of any subsequent negligence or willful misconduct of such minor in operating a motor vehicle.

History: En. Sec. 16, Ch. 267, L. 1947; R.C.M. 1947, 31-132; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Liability for negligence as well as willful acts, 27-1-701.

Cancellation of license upon death of person signing minor's application, 61-5-202.

Mandatory liability protection, Title 61, ch. 6, part 3.

61-5-110. Examination of applicants — cooperative driver testing programs. (1) The department shall examine each applicant for a driver's license or motorcycle endorsement, except as otherwise provided in this section. The examination must include a test of the applicant's eyesight, a knowledge test examining the applicant's ability to read and understand highway signs and the applicant's knowledge of the traffic laws of this state, and, except as provided in 61-5-118, a road test or a skills test demonstrating the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle, quadricycle, or motorcycle. The knowledge test or road test, or both, may be waived by the department upon certification of the applicant's successful completion of the test by a certified cooperative driver testing program, as provided in subsection (2).

(2) The department is authorized to certify as a cooperative driver testing program any state-approved high school traffic education course offered by or in cooperation with a school district that employs an approved instructor who has current endorsement from the superintendent of public instruction as a teacher of traffic education or any motorcycle safety training course approved by the board of regents and that employs an approved instructor of motorcycle safety training and who agrees to:

(a) administer standardized knowledge and road tests required by the department to students participating in the district's high school traffic education courses or motorcycle safety training courses approved by the board of regents;

(b) certify the test results to the department; and

(c) comply with regulations of the department, the superintendent of public instruction, and the board of regents.

(3) (a) Except as otherwise provided by law, a resident who has a valid driver's license issued by another jurisdiction may surrender that license for a Montana license of the same class, type, and endorsement upon payment of the required fees and successful completion of a vision examination. In addition, a resident surrendering a commercial driver's license issued by another jurisdiction shall successfully complete any examination required by federal regulations before being issued a commercial driver's license by the department.

(b) The department may require an applicant who surrenders a valid driver's license issued by another jurisdiction to submit to a knowledge and skills test if:

(i) the applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the surrendered license does not include readily discernible adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify a restriction imposed on the surrendered license.

(c) When a license from another jurisdiction is surrendered, the department shall notify the issuing agency from the other jurisdiction that the applicant has surrendered the license. If the applicant wants to retain the license from another jurisdiction for identification or other nondriving purposes, the department shall place a distinctive mark on the license, indicating that the license may be used for nondriving purposes only, and return the marked license to the applicant.

History: En. Sec. 18, Ch. 267, L. 1947; amd. Sec. 1, Ch. 408, L. 1975; R.C.M. 1947, 31-134(a); amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 32, Ch. 516, L. 1985; amd. Sec. 11, Ch. 443, L. 1987; amd. Sec. 1, Ch. 297, L. 1991; amd. Sec. 9, Ch. 195, L. 1993; amd. Secs. 4, 5, Ch. 53, L. 1995; amd. Secs. 4, 9, Ch. 364, L. 1995; amd. Sec. 11, Ch. 181, L. 1999; amd. Sec. 9, Ch. 309, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 181 in (2) at end after "education" inserted "or any motorcycle safety training course approved by the board of regents and that employs an approved instructor of motorcycle safety training"; in (2)(a) at end inserted "or motorcycle safety training courses approved by the board of regents"; at end of (2)(c) inserted "and the board of regents"; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 309 in (1) in second sentence before "operation" inserted "safe" and deleted former third and fourth sentences that read: "The examination for the commercial driver's license may include additional items. The knowledge test and the road test or the skills test must be waived for an applicant who works in a farm-related service industry and who otherwise meets the requirements for a seasonal commercial driver's license as set forth in this title and rules adopted by the department"; in two places in (3)(a) substituted "another jurisdiction" for "another state" and after "examination" deleted "and, if requested by the examiner, completion of either the knowledge test or road test, or both"; inserted

(3)(b) outlining when department may require applicant surrendering license to submit to knowledge and skills test; inserted (3)(c) requiring department to notify issuing agency from other jurisdiction of surrender of license and providing procedure for returning surrendered license to applicant; and made minor changes in style. Amendment effective October 1, 1999.

Termination Provision Repealed: Section 2, Ch. 292, L. 1999, repealed sec. 12, Ch. 53, L. 1995, which terminated this section September 30, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

Cross-References

Report to Department of Justice by physician, 37-2-311.

Commercial driver's license defined, 61-1-135.

Department to adopt sign manual, 61-8-202.

61-5-111. *(Bracketed language effective October 1, 2000)* **Contents of a driver's license, renewal, renewal by mail, license expirations, grace period, and fees for licenses, permits, and endorsements — notice of expiration.** (1) The department may appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses receipts and shall make necessary rules governing sales. In areas in which the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may, in its discretion, appoint an agent to sell receipts.

(2) The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to each qualifying applicant. The license must contain a full-face photograph of the licensee in the size and form prescribed by the department; a distinguishing number issued to the licensee; the full legal name, date of birth, Montana mailing address, and a brief description of the licensee; and either the licensee's customary signature or a digital reproduction of the licensee's customary signature. [The department may not use the licensee's social security number as the distinguishing number unless the licensee expressly authorizes the use.] A license is not valid until it is signed by the licensee.

(3) (a) When a person applies for renewal of a driver's license, the department shall test the applicant's eyesight. The department may also require the applicant to submit to a knowledge and skills test if:

(i) the renewal applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the expired or expiring license does not include adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify the restrictions stated on the expired or expiring license.

(b) In the case of a commercial driver's license, the department may also require that the applicant successfully complete a written examination as required by federal regulations.

(c) A person is considered to have applied for renewal of a Montana driver's license if the application is made within 6 months before or 3 months after the expiration of the person's license. Except as provided in subsection (3)(d), a person seeking to renew a driver's license shall appear in person at a Montana driver's examination station.

(d) (i) A person may renew a driver's license by mail if the person certifies that the person is temporarily out of state and will not be returning to the state prior to the expiration of the license.

(ii) An applicant who renews a driver's license by mail shall submit to the department an approved vision examination and a medical evaluation from a licensed physician in addition to the fees required for renewal.

(iii) If the department does not have a digitized photograph or signature record of the renewal applicant from the expiring license, then the department may require the renewal applicant to submit a personal photograph and signature that meets the requirements prescribed by the department.

(iv) The term of a license renewed by mail is 4 years, and a person may not renew by mail for consecutive license terms.

(e) The department shall mail a driver's license renewal notice no earlier than 60 days and no later than 30 days prior to the expiration date of a commercial driver's license if the licensee has previously submitted a written request for the notice, either at the time of initial application or of renewal of the license.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a license expires on the anniversary of the licensee's birthday 8 years or less after the date of issue or on the licensee's 75th birthday, whichever occurs first. The department may adopt rules to stagger the implementation of the conversion to an 8-year license cycle over a 4-year period.

(b) A license issued to a person who is 75 years of age or older expires on the anniversary of the licensee's birthday 4 years or less after the date of issue.

(c) A license issued to a person who is under 21 years of age expires on the licensee's 21st birthday.

(5) Whenever the department issues an original license to a person under the age of 18 years, the license must be designated and clearly marked as a "provisional license". Any license designated and marked as provisional may be suspended by the department for a period of not more than 12 months when its records disclose that the licensee, subsequent to the issuance of the license, has been guilty of careless or negligent driving.

(6) Fees for driver's licenses are:

(a) driver's license, except a commercial driver's license — $4 a year or fraction of a year;

(b) motorcycle endorsement — 50 cents a year or fraction of a year;

(c) commercial driver's license:

(i) interstate — $5 a year or fraction of a year;

(ii) intrastate — $3.50 a year or fraction of a year.

(7) Upon receipt of notice from another jurisdiction that a person licensed under this chapter has surrendered a Montana driver's license to that jurisdiction, the department shall change the license status on the person's official driver record to "inactive". If the person returns to Montana prior to the expiration of the previously surrendered license, the department may reactivate the license for the remainder of the license term.

History: (1) thru (6)En. Sec. 19, Ch. 267, L. 1947; amd. Sec. 1, Ch. 135, L. 1951; amd. Sec. 1, Ch. 130, L. 1953; amd. Sec. 1, Ch. 249, L. 1961; amd. Sec. 1, Ch. 228, L. 1963; amd. Sec. 1, Ch. 23, L. 1967; amd. Sec. 1, Ch. 288, L. 1971; amd. Sec. 4, Ch. 423, L. 1971; amd. Sec. 1, Ch. 409, L. 1975; Sec. 31-135, R.C.M. 1947; (7)En. Sec. 13, Ch. 199, L. 1943; Sec.

31-113, R.C.M. 1947; R.C.M. 1947, 31-113, 31-135(part); amd. Sec. 1, Ch. 361, L. 1979; amd. Sec. 55, Ch. 421, L. 1979; amd. Secs. 1, 2, Ch. 276, L. 1985; amd. Sec. 1, Ch. 277, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 33, Ch. 516, L. 1985; amd. Sec. 12, Ch. 443, L. 1987; amd. Sec. 10, Ch. 378, L. 1989; amd. Sec. 1, Ch. 726, L. 1991; amd. Sec. 10, Ch. 195, L. 1993; amd. Sec. 1, Ch. 26, Sp. L. November 1993; amd. Sec. 5, Ch. 364, L. 1995; amd. Sec. 3, Ch. 29, L. 1999; amd. Sec. 10, Ch. 309, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 29 in (2) inserted next to last sentence prohibiting use of licensee's social security number unless authorized by licensee. Amendment effective October 1, 2000.

Chapter 309 in second sentence in (2) substituted "full legal name" for "full name" and in two places before "signature" inserted "customary"; in (3)(a) after "applicant" substituted language outlining instances when applicant required to submit to a knowledge and skills test for "complete a road test demonstrating the applicant's ability to operate and to exercise ordinary and reasonable care in the operation of a motor vehicle"; inserted second sentence in (3)(c) requiring person seeking to renew driver's license to appear in person and providing exception; inserted (3)(d) outlining procedures for renewal of license by mail; deleted former (5) that read: "(5) It is unlawful for any person to have in the person's possession or under the person's control more than one valid Montana driver's license at any one time. A license is not valid for the operation of a motorcycle or quadricycle unless the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement". A license is not valid for the operation of a commercial vehicle unless the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "commercial driver's license""; deleted former (7) that read: "(7) The holder of a valid chauffeur's license may convert or renew the chauffeur's license to a commercial driver's license by paying the appropriate fee and complying with the requirements established by the department"; inserted (7) requiring department to change license status to inactive upon notice from another jurisdiction of surrender of Montana driver's license and providing for reactivation of license; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 7, Ch. 29, L. 1999, provided: "(1) [Sections 2 and 3] [61-5-107 and 61-5-111] apply to driver's licenses issued on or after October 1, 2000.

(2) [Sections 4 and 5] [87-2-106 and 87-2-202] apply to license years beginning on or after March 1, 2000."

Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

Cross-References

Adult rights — legal drinking age, Art. II, sec. 14, Mont. Const.

Duties of County Treasurer, 7-6-2111.

Agency, Title 28, ch. 10.

Commercial driver's license defined, 61-1-135.

Disposition of fees — use, 61-3-108, 61-5-121.

61-5-112. Types and classes of commercial driver's licenses — classification — rulemaking. The department shall adopt rules that it considers necessary for the safety and welfare of the traveling public governing the classification of commercial driver's licenses and related endorsements and the examination of commercial driver's license applicants and renewal applicants. The rules must:

(1) subject to the exceptions provided in this section, comport with the requirements of 49 CFR, part 383, and the medical qualifications of 49 CFR, part 391;

(2) allow for the issuance of a type 2 (intrastate only) commercial driver's license in accordance with medical qualification and visual acuity standards prescribed by the department;

(3) allow for the issuance of a type 2 commercial driver's license to a person who is 18 years of age or older or an operationally restricted type 2 commercial driver's license to a person who is 16 years of age or older;

(4) allow for issuance of a seasonal commercial driver's license based on standards established by the department for the waiver of the knowledge and skills test for a qualified person employed in farm-related service industries who has a good driving record and sufficient prior driving experience;

(5) prescribe the operational and seasonal restrictions for a seasonal commercial driver's license; and

(6) prescribe the requirements for the medical statement that must be submitted in order for a person to be qualified for a type 2 commercial driver's license.

History: En. Sec. 12, Ch. 267, L. 1947; amd. Sec. 1, Ch. 26, L. 1969; amd. Sec. 15, Ch. 94, L. 1973; R.C.M. 1947, 31-128; amd. Sec. 56, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 13, Ch. 443, L. 1987; amd. Sec. 11, Ch. 195, L. 1993; amd. Sec. 11, Ch. 309, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 309 in introduction substituted "shall adopt rules" for "upon issuing a commercial driver's license shall indicate on the license the class of license issued and shall appropriately examine each applicant according to the class applied for and may impose rules for classification, examination, and use" and after "public" inserted language regarding governing of classification of commercial driver's license and related endorsements and examinations; inserted (1) requiring rules to comport with federal regulations; inserted (2) requiring rules to allow for issuance of type 2 commercial license in accordance with medical qualification and visual acuity standards; inserted (3) requiring rules to allow for issuance of type 2 commercial license to person age 18 or older or restricted commercial license to person age 16 or older; inserted (4) requiring rules to allow for issuance of seasonal commercial license without knowledge and skills test to person in farm-related service industries with good driving record; inserted (5) requiring rules to prescribe operational and seasonal restrictions for seasonal commercial license; inserted (6) requiring rules to prescribe requirements for medical statement to qualify for type 2 commercial license; and made minor changes in style. Amendment effective April 15, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

School bus driver qualifications, 20-10-103.

School bus defined, 61-1-116.

Commercial driver's license defined, 61-1-135.

Requirements for carriers of persons for reward, 69-11-201.

61-5-113. Restricted licenses. (1) If, upon an applicant's completion of the vision, knowledge, and skills tests required under 61-5-110, 61-5-111, and 61-5-207, the department determines that an applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway depends on the use of adaptive equipment or operational restrictions, then the department shall include the appropriate restrictions on a license issued to the applicant. Once imposed, the restrictions may not be removed unless the department determines that the adaptive equipment or operational restrictions are no longer essential to the licensee's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway.

(2) The department may either issue a special restricted license or may include the restrictions on the usual license form.

(3) The department may upon receiving satisfactory evidence of a violation of the restrictions of a license or endorsement suspend or revoke the license. The licensee is entitled to a hearing as upon suspension or revocation under this chapter.

(4) It is a misdemeanor for a person to operate a motor vehicle in a manner in violation of the restrictions imposed in a restricted license.

History: En. Sec. 21, Ch. 267, L. 1947; R.C.M. 1947, 31-137; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 14, Ch. 443, L. 1987; amd. Sec. 12, Ch. 309, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 309 in (1) substituted language regarding license restrictions for former language that read: "The department upon issuing a driver's license shall have authority whenever good cause appears to impose restrictions suitable to the licensee's driving ability with respect to the type of or special mechanical control devices required on a motor vehicle which the licensee may operate or such other restrictions applicable to the licensee as the department may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

Cross-References

Administrative procedure — contested cases, Title 2, ch. 4, part 6.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

Penalty for misdemeanor, 61-5-307.

61-5-114. Duplicate licenses. In the event that an instruction permit or driver's license issued under the provisions of this chapter is lost or destroyed, the person to whom the same was issued may upon the payment of a fee of $5 obtain a duplicate or substitute thereof, upon furnishing proof satisfactory to the department that such permit or license has been lost or destroyed.

History: En. Sec. 22, Ch. 267, L. 1947; amd. Sec. 1, Ch. 36, L. 1953; amd. Sec. 16, Ch. 121, L. 1965; R.C.M. 1947, 31-138; amd. Sec. 2, Ch. 277, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 15, Ch. 443, L. 1987.

Cross-References

Disposition of fees — use, 61-3-108, 61-5-121.

61-5-115. Notice of change of address or name. Whenever any person after applying for or receiving a driver's license shall move from the address named in such application or in the license issued to him or when the name of a licensee is changed by marriage or otherwise such person shall within 10 days thereafter notify the department in writing of his old and new addresses or of such former and new names and of the number of any license then held by him.

History: En. Sec. 24, Ch. 267, L. 1947; R.C.M. 1947, 31-140; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 16, Ch. 443, L. 1987.

Cross-References

Notice — actual and constructive, 1-1-217.

Change of name, Title 27, ch. 31.

Marriage, Title 40, ch. 1.

61-5-116. License to be carried and exhibited on demand. Every licensee shall have his driver's license in his immediate possession at all times when operating a motor vehicle and shall display the same upon demand of a justice of the peace, a city or municipal judge, a peace officer, a highway patrol officer, or a field deputy or inspector of the department. However, no person charged with violating this section shall be convicted if he produces in court or the office of the arresting officer a driver's license theretofore issued to him and valid at the time of his arrest.

History: En. Sec. 20, Ch. 267, L. 1947; R.C.M. 1947, 31-136; amd. Sec. 4, Ch. 348, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 17, Ch. 443, L. 1987; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Duties of Justices of the Peace, 3-10-221.

Highway patrol — offenses on highways, rest areas, and state highway properties adjacent to highway or involving motor vehicles, 44-1-1003.

Peace officer defined, 45-2-101.

Penalty for misdemeanor, 61-5-307.

Mandatory liability protection — proof of compliance, 61-6-302.

Power to inspect vehicle registration, receipts, and other documents, 61-12-205.

61-5-117. Rulemaking authority. The department may adopt rules to implement the issuance and enforcement of classified commercial driver's licenses and shall adopt rules implementing 61-5-118.

History: En. Sec. 40, Ch. 443, L. 1987; amd. Sec. 75, Ch. 10, L. 1993; amd. Sec. 12, Ch. 195, L. 1993; amd. Sec. 7, Ch. 53, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

61-5-118. Third-party commercial driver testing program — test waiver. (1) The department may certify as a third-party commercial driver testing program any company that:

(a) in the course of its commercial enterprise, customarily transports or hauls any goods, including agricultural commodities, in company-owned class A commercial motor vehicles as prescribed by federal regulations;

(b) regularly and continuously employs a minimum number of drivers. The department shall determine the minimum number of drivers and whether they are regularly and continuously employed by the company.

(c) has a permanent Montana mailing address and maintains a place of business in this state that includes at least one permanent, regularly occupied structure with facilities and equipment to conduct offstreet skills testing;

(d) employs at least one examiner with qualifications required by rules of the department; and

(e) complies with rules adopted by the department under 61-5-117.

(2) The road test or the skills test required by 61-5-110 may be waived by the department for a commercial driver's license applicant upon certification of the applicant's successful completion of the road test or the skills test by:

(a) a third-party commercial driver testing program certified under subsection (1); or

(b) a third-party commercial driver examiner from a jurisdiction that has a comparable third-party commercial driver testing program, as determined by the department.

(3) An examiner for a certified third-party commercial driver testing program may administer a road test or a skills test only to a company employee who has applied to the department for a commercial driver's license and who has passed the knowledge test required by 61-5-110 and by department or federal rules.

History: En. Sec. 6, Ch. 53, L. 1995; amd. Sec. 1, Ch. 292, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 292 in (2)(a) provided that certification be under subsection (1); and inserted (2)(b) concerning third-party commercial driver examiner from a jurisdiction that has a comparable third-party commercial driver testing program. Amendment effective July 1, 1999.

Termination Provision Repealed: Section 2, Ch. 292, L. 1999, repealed sec. 12, Ch. 53, L. 1995, which terminated this section September 30, 1999.

61-5-119. Definitions. (1) For the purposes of 61-5-120, "driver rehabilitation specialist" means a person who:

(a) possesses current certification from the association of driver educators for the disabled as a driver rehabilitation specialist; or

(b) (i) provides comprehensive services in the clinical evaluation of the abilities of a person with a disability to safely operate a motor vehicle, utilizing, among other things, wheelchair and seating assessment, vehicle modification prescription, and driver education;

(ii) (A) possesses a bachelor's degree in rehabilitation, education, or health and safety; in physical, occupational, or recreational therapy; or in a related profession; or

(B) has an equivalent of 8 years of experience in driver rehabilitation and education; and

(iii) has at least 1 year of experience in the area of driver evaluation and training for individuals with disabilities.

(2) For the purposes of this chapter, "jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico or a province or territory of Canada.

History: En. Sec. 1, Ch. 309, L. 1999.

Compiler's Comments

Effective Date: Section 24(2), Ch. 309, L. 1999, provided that this section is effective October 1, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

61-5-120. Medical assessment and rehabilitation driving permit. (1) Upon the written request of a licensed physician on a form prescribed by the department, the department may authorize a driver rehabilitation specialist to issue a temporary medical assessment and rehabilitation driving permit to a person who is not licensed to drive or whose license has expired under the provisions of this chapter for the purpose of driver assessment, rehabilitation, and training.

(2) The temporary permit may be issued only to a person who is 16 years of age or older.

(3) The permit is valid for up to 6 weeks, beginning with the date of the first evaluation of the permitholder by the driver rehabilitation specialist. The driver rehabilitation specialist shall sign and date the permit at the time of the first evaluation.

(4) The permit is valid only when the permitholder is operating a motor vehicle under the immediate supervision of the driver rehabilitation specialist during the permitholder's participation in an actual in-vehicle evaluation process.

(5) The department may extend the duration of a medical assessment and rehabilitation permit for an additional 6-week period if the driver rehabilitation specialist or the licensed physician certifies that the permitholder needs additional time to complete the driver assessment, rehabilitation, and training process.

History: En. Sec. 2, Ch. 309, L. 1999.

Compiler's Comments

Effective Date: Section 24(2), Ch. 309, L. 1999, provided that this section is effective October 1, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

61-5-121. Disposition of fees. (1) The disposition of the fees from driver's licenses, motorcycle endorsements, commercial driver's licenses, and duplicate driver's licenses provided for in 61-5-114 is as follows:

(a) The amount of 16.7% of each driver's license fee and 25% of each duplicate driver's license fee must be deposited into an account in the state special revenue fund. The department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404.

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 2.5% of each driver's license fee and 3.75% of each duplicate driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the state general fund.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 3.34% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the state general fund.

(d) The amount of 26.25% of each driver's license fee and 8.75% of each duplicate driver's license fee must be deposited into the state traffic education account.

(e) In addition to the amounts deposited pursuant to subsections (1)(b)(ii) and (1)(c)(ii), the amount of 54.55% of each driver's license fee and 62.5% of each duplicate driver's license fee must be deposited into the state general fund.

(f) If the fee is collected by the county treasurer or other agent of the department, the amount of 2.5% of each commercial driver's license fee must be deposited into the county general fund, otherwise all of the fee must be deposited into the state general fund.

(g) The amount of 63.46% of each motorcycle endorsement fee must be deposited into the state motorcycle safety account in the state special revenue fund, and the amount of 33.2% of each motorcycle endorsement fee must be deposited into the state general fund.

(2) (a) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, the county treasurer or agent shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. The county treasurer or agent shall then remit to the state treasurer all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund, as provided in subsection (1)(a), and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a) and (1)(d) through (1)(g).

(b) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall remit all fees to the state treasurer, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state special revenue fund, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), and (1)(d) through (1)(g).

History: En. Sec. 3, Ch. 277, L. 1985; amd. Sec. 13, Ch. 503, L. 1985; amd. Sec. 115, Ch. 370, L. 1987; amd. Sec. 18, Ch. 443, L. 1987; amd. Sec. 4, Ch. 62, L. 1989; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 1, Ch. 275, L. 1989; amd. Sec. 12, Ch. 398, L. 1989; amd. Sec. 2, Ch. 584, L. 1991; amd. Sec. 9, Ch. 701, L. 1991; amd. Sec. 2, Ch. 726, L. 1991; amd. Secs. 3, 5, Ch. 5, Sp. L. January 1992; amd. Sec. 5, Ch. 11, Sp. L. July 1992; amd. Sec. 13, Ch. 195, L. 1993; amd. Sec. 2, Ch. 39, Sp. L. November 1993; amd. Sec. 56, Ch. 509, L. 1995; amd. Sec. 250, Ch. 42, L. 1997; amd. Sec. 52, Ch. 422, L. 1997; amd. Sec. 12, Ch. 181, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 181 in (1)(g) near middle substituted "motorcycle safety account" for "traffic education account"; and made minor changes in style. Amendment effective July 1, 1999.

Cross-References

Fund structure, 17-2-102.

Highway patrol officers' retirement, Title 19, ch. 6, part 4.

State's contribution, 19-6-404.

State traffic education account, 20-7-504.

Licenses issued to operators and chauffeurs — renewals and expiration — fees, 61-5-111.

Duplicate license, 61-5-114.

61-5-122 through 61-5-124 reserved.

61-5-125. Authority of department — rulemaking authority. (1) The department shall administer and enforce the provisions of this chapter.

(2) The department shall adopt rules setting standards to govern driver's license examinations and reexaminations. The rules:

(a) must specifically address the functional abilities and skills required for a person to exercise ordinary and reasonable control in the safe operation of a motor vehicle on a highway;

(b) must include minimum uncorrected or corrected visual acuity requirements for both unrestricted and restricted licensure and may include minimum field of vision and depth perception requirements and hearing requirements for unrestricted and restricted licensure;

(c) may direct the design of one or more types of skills tests to assess an applicant's or licensee's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway. A skills test may consist of:

(i) a comprehensive assessment of a person's functional abilities by means of an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle; or

(ii) a more limited assessment of a person's functional abilities, conducted at the discretion of the department, as related to a specific physical or mental condition or conditions or a request for reexamination;

(d) must include operational restrictions based upon the visual acuity of an applicant or licensee;

(e) may take into consideration any nationally recognized standards or recommended practices for assessment of a person's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway;

(f) must include appropriate licensing criteria relating to the use of adaptive equipment or operational limits that can be readily discerned by law enforcement or a licensing agency in another jurisdiction;

(g) may be derived from medical guidelines and information compiled by driver licensing medical advisory or review boards from other jurisdictions, as well as information received from advocacy groups for persons with disabilities and senior citizens; and

(h) except as provided in 61-5-105, may not use a person's age or physical or mental disability, limitation, or condition as a justification for denial of a license.

(3) The department may adopt additional rules governing:

(a) acceptable methods of proof of identification that must be supplied by a person upon application for or renewal of a driver's license;

(b) issuance of a hardship license to an underage applicant;

(c) the cancellation of a driver's license upon receipt of an insufficient funds check in payment of license fees;

(d) circumstances under which the department may issue a probationary license to a person whose license has been suspended or revoked or a person whose license is subject to a discretionary suspension or revocation;

(e) restrictions to be imposed upon a probationary license;

(f) renewal of a driver's license by a person in the military assigned to active duty who had a valid Montana driver's license at the time of entering active duty; and

(g) issuance of a duplicate driver's license.

History: En. Sec. 1, Ch. 74, L. 1987; amd. Sec. 13, Ch. 309, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 309 at end of (1) after "chapter" deleted "and may adopt rules to implement this chapter"; inserted (2) requiring adoption of rules and outlining what rules setting standards for examinations and reexaminations must include; and inserted (3) authorizing adoption of additional rules and outlining guidelines governing additional rules. Amendment effective April 15, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

61-5-126. Providing information to selective service system. At the request of the director of the selective service system, provided for in 50 App. U.S.C. 460, the department shall provide a list of persons born in specified years who are holders of driver's licenses for the exclusive purpose of ensuring compliance with the military draft registration requirements of the federal Military Selective Service Act (50 App. U.S.C. 451, et seq.). The department shall notify the persons that information regarding them was released to the selective service system. The department may not provide the selective service system with the social security or driver's license numbers of persons on the list for any purpose.

History: En. Sec. 2, Ch. 663, L. 1989; amd. Sec. 251, Ch. 42, L. 1997.

Part 2

Revocation, Suspension, or Cancellation of Licenses

Part Cross-References

Commercial driver's license defined, 61-1-135.

Suspension defined, 61-1-503.

Revocation defined, 61-1-504.

Report of convictions and suspension or revocation of driver's licenses — surrender of licenses, 61-11-101.

Department of Justice to revoke license of habitual offender, 61-11-211.

61-5-201. Authority of department to cancel license. (1) The department may cancel a driver's license upon determining that the licensee was not entitled to the issuance or that since the issuance, the licensee has become ineligible as determined pursuant to the provisions of 61-5-105 or that the licensee failed to give the required or correct information in the licensee's application or committed any fraud in making the application.

(2) Upon cancellation, the licensee shall surrender the canceled license to the department.

History: En. Sec. 26, Ch. 267, L. 1947; amd. Sec. 1, Ch. 219, L. 1973; R.C.M. 1947, 31-142; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 19, Ch. 443, L. 1987; amd. Sec. 14, Ch. 195, L. 1993.

Cross-References

Kinds of fraud, 28-2-404.

What constitutes actual fraud — constructive fraud, 28-2-405, 28-2-406.

Unsworn falsification to authorities, 45-7-203.

61-5-202. Cancellation of license upon death of person signing minor's application. The department upon receipt of satisfactory evidence of the death of the persons who signed the application of a minor for a license shall cancel such license and shall not issue a new license until such time as a new application, duly signed and verified, is made as required by this chapter. This provision shall not apply in the event the minor has attained the age of 18 years.

History: En. Sec. 17, Ch. 267, L. 1947; R.C.M. 1947, 31-133; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Minor defined, 41-1-101.

Release from liability, 61-5-109.

61-5-203. Suspending privileges of nonresidents. The privilege of driving a motor vehicle on the highways of this state given to a nonresident is subject to suspension or revocation by the department in like manner and for like causes as a driver's license issued under this chapter may be suspended or revoked.

History: En. Sec. 27, Ch. 267, L. 1947; R.C.M. 1947, 31-143(a); amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 20, Ch. 443, L. 1987; amd. Sec. 15, Ch. 195, L. 1993.

Cross-References

Residence — rules for determining, 1-1-215.

Driver License Compact, Title 61, ch. 5, part 4.

61-5-204. Suspending resident's license upon conviction in another state. The department may suspend or revoke the driver's license of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice of the conviction of the person in another jurisdiction of an offense in that jurisdiction which, if committed in this state, would be grounds for the suspension or revocation of the driver's license.

History: **En. Sec. 28, Ch. 267, L. 1947; R.C.M. 1947, 31-144; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 21, Ch. 443, L. 1987; amd. Sec. 12, Ch. 378, L. 1989; amd. Sec. 16, Ch. 195, L. 1993.**

Cross-References

Residence — rules for determining, 1-1-215.

Driver License Compact, Title 61, ch. 5, part 4.

61-5-205. Mandatory revocation of license upon proper authority. The department upon proper authority shall revoke the driver's license or the operating privilege of any driver upon receiving a record of the driver's conviction or forfeiture of bail not vacated of any of the following offenses, when the conviction or forfeiture has become final:

(1) negligent homicide resulting from the operation of a motor vehicle;

(2) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs, except as provided in 61-5-208, or operation of a motor vehicle by a person with a blood alcohol concentration of 0.10 or more;

(3) any felony in the commission of which a motor vehicle is used;

(4) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(5) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;

(6) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of 12 months; or

(7) negligent vehicular assault as defined in 45-5-205.

History: **En. Sec. 30, Ch. 267, L. 1947; amd. Sec. 1, Ch. 192, L. 1957; amd. Sec. 1, Ch. 125, L. 1961; amd. Sec. 2, Ch. 155, L. 1969; amd. Sec. 47, Ch. 359, L. 1977; amd. Sec. 2, Ch. 430, L. 1977; R.C.M. 1947, 31-146; amd. Sec. 1, Ch. 698, L. 1983; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 22, Ch. 443, L. 1987; amd. Sec. 2, Ch. 612, L. 1987; amd. Sec. 1, Ch. 335, L. 1989; amd. Sec. 17, Ch. 195, L. 1993.**

Cross-References

Criminal justice policy — rights of convicted, Art. II, sec. 28, Mont. Const.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Felony defined, 45-2-101.

Negligent homicide, 45-5-104.

Minor in possession, 45-5-624.

Perjury, 45-7-201.

False swearing, 45-7-202.

Unsworn falsification to authorities, 45-7-203.

Bail-jumping, 45-7-308.

Bail, Title 46, ch. 9.

Effect of conviction on civil rights, 46-18-801.

License reinstatement fee to fund county drinking and driving prevention programs, 61-2-107.

Duty to give information and render aid, 61-7-105.

Driving under influence of alcohol or drugs, Title 61, ch. 8, part 4.

Penalty for driving while intoxicated, 61-8-714.

Penalty for operation of motor vehicle by person with alcohol concentration of 0.10 or more, 61-8-722.

Report of convictions and suspension or revocation of driver's licenses, 61-11-101.

Department of Justice to revoke license of habitual offender, 61-11-211.

61-5-206. Authority of department to suspend license or driving privilege or issue probationary license. (1) The department may suspend the driver's license or driving privilege of a driver without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

(a) has been involved as a driver in any accident resulting in the death or personal injury of another or serious property damage;

(b) has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;

(c) is an habitually reckless or negligent driver of a motor vehicle;

(d) is incompetent to drive a motor vehicle;

(e) has committed or permitted an unlawful or fraudulent use of the license as specified in 61-5-302;

(f) has committed an offense in another state which if committed in this state would be grounds for suspension or revocation;

(g) has falsified the licensee's date of birth on the application for a driver's license;

(h) is under 21 years of age and has altered the licensee's or another's driver's license or identification card to obtain alcohol; or

(i) has authorized another to use the licensee's driver's license or identification card to obtain alcohol.

(2) However, the department may, in its discretion and in lieu of suspending the license or driving privilege, issue a probationary license to a driver, without preliminary hearing, upon a showing by its records or other sufficient evidence that the licensee's driving record is such as would authorize suspension as provided in subsection (1). Upon issuance of a probationary license, the licensee is subject to the restrictions set forth in the probationary license. The licensee's driving privilege may be suspended upon conviction or forfeiture of bail not vacated of any traffic violation during the period of probation. The licensee shall surrender to the department all driver's licenses that have been issued to the licensee before the probationary license may be issued. The licensee's refusal or neglect to surrender the licenses upon demand is grounds for suspending all licenses. Probationary licenses may be issued for a period not to exceed 12 months.

(3) Upon suspending the license of any person or upon placing the person on probation, as authorized in this section, the department shall immediately notify the licensee in writing and upon the licensee's request shall afford the licensee an opportunity for a hearing as early as practical within not to exceed 20 days after receipt of the request in the county in which the licensee resides unless the department and the licensee agree that the hearing may be held in some other county. At the hearing the department through its authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. At the hearing, the department shall either rescind its order of suspension or probation, or, for good cause, may affirm, reduce, or extend the period of probation or suspension of the license.

History: En. Sec. 31, Ch. 267, L. 1947; amd. Sec. 1, Ch. 101, L. 1961; amd. Sec. 1, Ch. 137, L. 1969; R.C.M. 1947, 31-147; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 244, L. 1987; amd. Sec. 23, Ch. 443, L. 1987; amd. Sec. 1, Ch. 471, L. 1991; amd. Sec. 18, Ch. 195, L. 1993.

Cross-References

Notice — actual and constructive, 1-1-217.

Administrative procedure — contested cases, Title 2, ch. 4, part 6.

Unsworn falsification to authorities, 45-7-203.

Bail, Title 46, ch. 9.

Driver License Compact, Title 61, ch. 5, part 4.

Required obedience to traffic laws, 61-8-104.

Obedience to traffic-control devices, 61-8-201.

Reckless driving — penalty, 61-8-301, 61-8-715.

Careless driving — penalty, 61-8-302, 61-8-716.

Speed restrictions — basic rule, 61-8-303.

Records to be kept by Department of Justice, 61-11-102.

Habitual traffic offenders, Title 61, ch. 11, part 2.

Incapacitated person defined, 72-5-101.

61-5-207. Reexamination or medical evaluation — when required. (1) If the department receives reliable evidence that a licensed driver lacks the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway, the department may, upon written notice of at least 5 days to the licensee, require the licensee to obtain a medical evaluation from a licensed physician or submit to one or more tests customarily conducted by the department for licensure under 61-5-110.

(2) Upon the review of a medical evaluation, the conclusion of testing, or both, the department may:

(a) impose restrictions on the license, as provided in 61-5-113, that are appropriate to the licensee's acknowledged or demonstrated functional abilities;

(b) suspend the license indefinitely based upon a licensee's inability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; or

(c) take no action modifying the license or placing restrictions on the licensee.

(3) The age of a licensee, by itself, does not constitute evidence of a condition requiring a reexamination or a medical evaluation by a licensed physician.

(4) A suspension under this section continues in effect until evidence satisfactory to the department establishes that the licensee has regained the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on a highway.

(5) Refusal or neglect of the licensee to obtain a medical evaluation from a licensed physician or submit to testing as required by the department is grounds for suspension of the person's license.

History: En. Sec. 32, Ch. 267, L. 1947; R.C.M. 1947, 31-148; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 24, Ch. 443, L. 1987; amd. Sec. 3, Ch. 419, L. 1991; amd. Sec. 19, Ch. 195, L. 1993; amd. Sec. 14, Ch. 309, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 309 near beginning of (1) after "department" substituted language regarding department receiving reliable evidence that driver lacks ability for safe operation of vehicle for "having good cause to believe that a licensed driver is incompetent or otherwise not qualified to be licensed, may, based on information received, investigate the licensee's record, physical or mental condition, or need for a license" and at end after "licensee" substituted language regarding authorizing department to obtain medical evaluation from licensed physician or requiring applicant to submit to one or more tests for "submit to an examination"; at beginning of (2) after "Upon" inserted "the review of a medical evaluation", after "conclusion" substituted "of testing, or both" for "of the investigation or examination", and after "department" substituted outline of department options at conclusion of testing for "shall take action as may be appropriate considering the facts reported or discovered and may suspend or revoke the driver's license of the person or permit the person to retain the license or may issue a license subject to restrictions as permitted under 61-5-113"; inserted (3) concerning age; inserted (4) concerning duration of suspension; in (5) substituted "obtain a medical evaluation from a licensed physician or submit to testing as required by the department" for "submit to the investigation or examination" and after "suspension" deleted "or revocation"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

Cross-References

Report to Department of Justice by physician, 37-2-311.

Incapacitated person defined, 72-5-101.

61-5-208. Period of suspension or revocation — probationary license — ignition interlock device required on second or subsequent offense. (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as otherwise permitted by law.

(2) (a) A person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored unless the revocation was for a cause that has been removed. After the expiration of the period of the revocation or suspension, the person may apply for a new license or endorsement as provided by law, but the department may not issue a new license or endorsement unless it is satisfied, after investigation of the driving ability of the person and upon a showing by its records or other sufficient evidence, that the person is eligible to be licensed to drive in Montana.

(b) When a person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license or driving privilege of the person for a period of 1 year and, upon issuance of any restricted probationary license during the period of revocation, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device. If the 1-year period passes and the person has not completed a chemical dependency education course, treatment, or both, as ordered by the sentencing court, the license revocation remains in effect until the course, treatment, or both, are completed.

(c) For the purposes of subsection (2)(b), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.

(3) (a) If a person pays the reinstatement fee required in 61-2-107 and provides the department proof of compliance with an ignition interlock restriction imposed under 61-8-442, the department shall stay the license suspension of a person who has been convicted of a violation of 61-8-401 or 61-8-406 and return the person's driver's license. The stay must remain in

effect until the period of suspension has expired and any required chemical dependency education course, treatment, or both, have been completed.

(b) If the department receives notice from a court, peace officer, or ignition interlock vendor that the person has violated the court-imposed ignition interlock restriction by, including but not limited to operating a motor vehicle not equipped with the device, tampering with the device, or removing the device before the period of restriction has expired, the department shall lift the stay and reinstate the license suspension for the remainder of the time period. The department may not issue a probationary driver's license to a person whose license suspension has been reinstated because of violation of an ignition interlock restriction.

(4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection (2).

(5) The period of revocation for a person convicted of any offense that makes mandatory the revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(6) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-811 and subsection (2) of this section.

History: (1) thru (3)En. Sec. 33, Ch. 267, L. 1947; amd. Sec. 1, Ch. 126, L. 1957; amd. Sec. 1, Ch. 161, L. 1961; amd. Sec. 1, Ch. 339, L. 1969; amd. Sec. 4, Ch. 430, L. 1977; Sec. 31-149, R.C.M. 1947; (4)En. Sec. 29, Ch. 267, L. 1947; amd. Sec. 1, Ch. 165, L. 1957; amd. Sec. 1, Ch. 27, L. 1961; amd. Sec. 1, Ch. 386, L. 1973; amd. Sec. 3, Ch. 430, L. 1977; Sec. 31-145, R.C.M. 1947; R.C.M. 1947, 31-145(d), 31-149; amd. Sec. 57, Ch. 421, L. 1979; amd. Sec. 2, Ch. 698, L. 1983; amd. Sec. 1, Ch. 314, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 25, Ch. 443, L. 1987; amd. Sec. 3, Ch. 612, L. 1987; amd. Sec. 13, Ch. 378, L. 1989; amd. Sec. 1, Ch. 476, L. 1989; amd. Sec. 2, Ch. 563, L. 1991; amd. Sec. 20, Ch. 195, L. 1993; amd. Sec. 5, Ch. 107, L. 1997; amd. Sec. 2, Ch. 258, L. 1999; amd. Sec. 15, Ch. 309, L. 1999; amd. Sec. 1, Ch. 455, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 258 in second sentence of (2)(b) after "1 year" inserted remainder of sentence concerning restricted probationary license; in (3)(a) in two places after "suspension" deleted "or revocation"; in (3)(b) in first sentence after "violated the" inserted "court-imposed" and in first and second sentences after "suspension" deleted "or revocation"; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 309 inserted (2)(c) regarding when person is considered to have committed second, third, or subsequent offense; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 455 in (2)(b) near middle of third sentence after "completed" substituted "a chemical dependency education" for "an alcohol information"; in (3)(a) in second sentence after "required" substituted "chemical dependency education" for "alcohol information"; and made minor changes in style. Amendment effective October 1, 1999.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

Cross-References

Bail, Title 46, ch. 9.

Effect of conviction — civil disabilities, 46-18-801.

Who may not be licensed, 61-5-105.

Accidents involving death or personal injuries, 61-7-103.

Driving under influence of alcohol or drugs, Title 61, ch. 8, part 4.

Penalty for driving while intoxicated, 61-8-714.

Penalty for driving with excessive blood alcohol concentration, 61-8-722.

Report of convictions and suspension or revocation of driver's licenses — surrender of licenses, 61-11-101.

61-5-209. Surrender and return of license upon suspension or revocation. When the department suspends or revokes a license, it shall require that the license be surrendered to and be retained by the department except that at the end of the period of suspension, the surrendered license must be returned to the licensee.

History: En. Sec. 34, Ch. 267, L. 1947; R.C.M. 1947, 31-150; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 26, Ch. 443, L. 1987; amd. Sec. 21, Ch. 195, L. 1993.

Cross-References

Surrender of license and registration, 61-6-112.

Report of convictions and suspension or revocation of driver's licenses — surrender of licenses, 61-11-101.

61-5-210. No operation under foreign license during suspension or revocation in this state. A resident or nonresident whose license or right or privilege to operate a motor vehicle or commercial motor vehicle in this state has been suspended or revoked as provided in this chapter may not operate a motor vehicle or commercial motor vehicle in this state under a license, permit, or registration certificate issued by any other jurisdiction or otherwise during the suspension or after the revocation until a new license is obtained under this chapter.

History: En. Sec. 35, Ch. 267, L. 1947; R.C.M. 1947, 31-151; amd. Sec. 27, Ch. 443, L. 1987; amd. Sec. 22, Ch. 195, L. 1993.

Cross-References

Driver License Compact, Title 61, ch. 5, part 4.

61-5-211. Right of appeal to court. A person denied a driver's license or whose license has been canceled, suspended, or revoked by the department except when the cancellation or revocation is mandatory under the provisions of this chapter may file a petition within 30 days after the denial, cancellation, suspension, or revocation for a hearing in the matter in the district court in the county in which the person resides. The court has jurisdiction and it shall set the matter for hearing upon 30 days' written notice to the department, and shall take testimony and examine the facts of the case and determine whether the petitioner is entitled to a driver's license or is subject to suspension, cancellation, or revocation of the license under the provisions of this chapter.

History: En. Sec. 36, Ch. 267, L. 1947; R.C.M. 1947, 31-152; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 28, Ch. 443, L. 1987; amd. Sec. 23, Ch. 195, L. 1993.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Montana Rules of Appellate Procedure, Title 25, ch. 21.

Review of administrative actions, 61-5-406.

61-5-212. Driving while license suspended or revoked — penalty — seizure of vehicle or rendering vehicle inoperable. (1) A person who drives a motor vehicle or commercial motor vehicle on any public highway of this state at a time when the person's privilege to do so is suspended or revoked in this state or any other state is guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than $500.

(2) The department upon receiving a record of the conviction of any person under this section upon a charge of driving a vehicle while the person's driver's

license was suspended or revoked shall extend the period of suspension or revocation for an additional like period.

(3) The vehicle owned and operated at the time of an offense under this section by a person whose driver's license is suspended or revoked for violating the provisions of 61-8-401, 61-8-402, 61-8-406, 61-8-409, or 61-8-410 must, upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the convicted person's county of residence for a period of 30 days.

(4) The sentencing court shall order the action provided for under subsection (3) and shall specify the date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered inoperable by the sheriff within 10 days after the conviction.

(5) A convicted person is responsible for all costs associated with actions taken under subsection (3). Joint ownership of the vehicle with another person does not prohibit the actions required by subsection (3) unless the sentencing court determines that those actions would constitute an extreme hardship on a joint owner who is determined to be without fault.

(6) A court may not suspend or defer imposition of penalties provided by this section.

History: En. Sec. 39, Ch. 267, L. 1947; amd. Sec. 1, Ch. 84, L. 1959; R.C.M. 1947, 31-155; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 29, Ch. 443, L. 1987; amd. Sec. 1, Ch. 30, L. 1989; amd. Sec. 24, Ch. 195, L. 1993; amd. Sec. 5, Ch. 447, L. 1995; amd. Sec. 1, Ch. 88, L. 1997.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Habitual traffic offender operating motor vehicle guilty of misdemeanor, 61-11-213.

61-5-213. Conviction defined. For the purposes of parts 1 through 3 of this chapter and 61-11-101 and 61-11-102 the term "conviction" shall mean a final conviction, except that the department shall record a deferred imposition of sentence as a conviction if the underlying offense is a felony. Also, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

History: En. Sec. 29, Ch. 267, L. 1947; amd. Sec. 1, Ch. 165, L. 1957; amd. Sec. 1, Ch. 27, L. 1961; amd. Sec. 1, Ch. 386, L. 1973; amd. Sec. 3, Ch. 430, L. 1977; R.C.M. 1947, 31-145(c); amd. Sec. 1, Ch. 369, L. 1991.

Cross-References

Conditions of bail — violation of conditions, Title 46, ch. 9, part 5.

Sentence and judgment, Title 46, ch. 18.

Execution of judgment, Title 46, ch. 19.

61-5-214. Mandatory suspension for failure to appear or pay fine — notice. (1) The department shall suspend the license or driving privilege of a person immediately upon receipt of a certified copy of a docket page or other sufficient evidence from the court that the person:

(a) is charged with or convicted of a violation of chapters 3 through 10 of this title;

(b) (i) failed to post the set bond amount or appear upon issued complaint, summons, or court order; or

(ii) when assessed a fine, costs, or restitution of $100 or more, failed to pay the fine, costs, or restitution; and

(c) received prior written notice that the driver's license or driving privileges of the person will be suspended upon a failure to post bond or appear on an issued complaint, summons, or court order or upon a failure to pay assessed fines, costs, or restitution.

(2) The suspension continues in effect until the court notifies the department that the person has paid the reinstatement fee and either appeared in court or paid the assessed fines, costs, or restitution.

(3) The notice required under this section may be included on the summons or complaint and notice to appear form given to the person when charges are initially filed or may be contained in a court order, either hand-delivered to the person while in court or sent by first-class mail, postage prepaid, to the most current address for that person received by or on record with the court. The initial notice must be followed by a written warning from the court, sent by first-class mail, advising the person that a license suspension is imminent and of the probable consequences of a suspension unless the person appears or pays within a specified number of days.

History: En. Sec. 1, Ch. 442, L. 1987; amd. Sec. 68, Ch. 83, L. 1989; amd. Sec. 1, Ch. 263, L. 1989; amd. Sec. 1, Ch. 441, L. 1995.

61-5-215. Provisional licenses prohibited — reinstatement fee. (1) No provisional, restricted, or probationary license may be issued upon a suspension under 61-5-214.

(2) A person whose license is suspended under 61-5-214 shall pay a reinstatement fee of $25 to the court for deposit in the state general fund.

History: En. Sec. 2, Ch. 442, L. 1987.

61-5-216. Reinstatement of license. Upon receipt of notification from the court that the operator has appeared, posted the bond, or paid the fine, costs, or restitution amounts and the reinstatement fee, the department shall immediately reinstate the license, unless the operator otherwise is not entitled to reinstatement.

History: En. Sec. 3, Ch. 442, L. 1987; amd. Sec. 69, Ch. 83, L. 1989.

61-5-217. Suspending privileges of persons under age eighteen. The privilege of driving a motor vehicle on the highways of this state given to a person under the age of 18 is subject to suspension or revocation by the department in like manner and for like causes as an adult.

History: En. Sec. 2, Ch. 484, L. 1987.

Cross-References

Confiscation of youth's driver's license — consent adjustment, 41-5-1304.

Confiscation of youth's driver's license — youth in need of intervention or youth who violates consent adjustment, 41-5-1512.

Part 3
Miscellaneous Provisions

Part Cross-References

Special parking permits for the handicapped, Title 49, ch. 4, part 3.

61-5-301. Indication on driver's license of intent to make anatomical gift. (1) The department of justice shall provide on each driver's license a space for indicating when the licensee has executed a document under 72-17-201 of intent to make a gift of all or part of his body under the Uniform Anatomical Gift Act.

(2) The department shall provide each applicant, at the time of application for a new driver's license or for a renewal, printed information calling the applicant's attention to the provisions of this section. Each applicant must be asked orally whether he wishes to make an anatomical gift.

(3) Each applicant must be given an opportunity to indicate in the space provided under subsection (1) his intent to make an anatomical gift.

(4) The department shall issue to every applicant who indicates such an intent a statement which, when signed by the licensee in the manner prescribed in 72-17-201, constitutes a document of anatomical gift. This statement must be printed on a sticker that the donor may attach permanently to the back of his driver's license.

(5) The department shall also furnish the licensee a means of revoking the document of gift upon the license.

History: En. 31-135.1 by Sec. 1, Ch. 28, L. 1977; R.C.M. 1947, 31-135.1; amd. Sec. 2, Ch. 459, L. 1985; amd. Sec. 1, Ch. 204, L. 1987; amd. Sec. 30, Ch. 443, L. 1987; amd. Sec. 2, Ch. 540, L. 1989.

61-5-302. Unlawful use of license or identification card. It is a misdemeanor for a person to:

(1) display or cause or permit to be displayed or have in the person's possession a canceled, revoked, suspended, fictitious, or altered driver's license or identification card;

(2) lend the person's driver's license or identification card to any other person or knowingly permit its use by another;

(3) display or represent as one's own any driver's license or identification card not issued to the person;

(4) fail or refuse to surrender to the department upon its lawful demand a driver's license or identification card that has been suspended, revoked, or canceled;

(5) use a false or fictitious name in an application for a driver's license or identification card or knowingly make a false statement or knowingly conceal a material fact or otherwise commit a fraud in an application; or

(6) permit any unlawful use of a driver's license or identification card issued to the person.

History: En. Sec. 37, Ch. 267, L. 1947; amd. Sec. 1, Ch. 70, L. 1961; R.C.M. 1947, 31-153; amd. Sec. 58, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 31, Ch. 443, L. 1987; amd. Sec. 2, Ch. 471, L. 1991; amd. Sec. 25, Ch. 195, L. 1993.

Cross-References

Kinds of fraud, 28-2-404.

What constitutes actual fraud — constructive fraud, 28-2-405, 28-2-406.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Unsworn falsification to authorities, 45-7-203.

Misdemeanor — no penalty specified, 46-18-212.

61-5-303. Making false affidavit — penalty. Any person who makes any false affidavit or knowingly swears or affirms falsely to any matter or thing required by the terms of parts 1 through 3 of this chapter to be sworn to or affirmed is guilty of false swearing and upon conviction shall be punishable as provided by 45-7-202.

History: En. Sec. 38, Ch. 267, L. 1947; R.C.M. 1947, 31-154; amd. Sec. 59, Ch. 421, L. 1979.

61-5-304. Permitting unauthorized minor to drive. No person shall cause or knowingly permit his child or ward under the age of 18 years to drive a motor vehicle upon any highway when such minor is not authorized hereunder or in violation of any of the provisions of parts 1 through 3 of this chapter.

History: En. Sec. 40, Ch. 267, L. 1947; R.C.M. 1947, 31-156.

Cross-References

Minor defined, 41-1-101.

Application of minor, 61-5-108.

61-5-305. Employing driver without license. No person shall employ as a commercial vehicle operator any person not then licensed as provided by this chapter.

History: En. Sec. 41, Ch. 267, L. 1947; R.C.M. 1947, 31-157; amd. Sec. 32, Ch. 443, L. 1987.

Cross-References

Carriers of passengers, Title 69, ch. 11, part 2.

61-5-306. Renting motor vehicle to another. (1) A person may not rent a motor vehicle to any other person unless the latter person is licensed under this chapter or, in the case of a nonresident, licensed under the laws of the state or country of the person's residence except a nonresident whose home state or country does not require that an operator be licensed.

(2) A person may not rent a motor vehicle to another until the person has inspected the driver's license of the proposed renter and compared and verified the signature on the license with the signature of the proposed renter written in the person's presence.

(3) A person may not rent a commercial motor vehicle to another until the person has inspected the driver's license of the proposed renter and determined that the proposed renter has a commercial driver's license.

(4) Every person renting a motor vehicle to another shall keep a record of the registration number of the motor vehicle rented, the name and address of the person to whom the vehicle is rented, and the number and expiration date of the license of the renter. The record is open to inspection by any police officer or officer or employee of the department.

History: En. Sec. 42, Ch. 267, L. 1947; R.C.M. 1947, 31-158; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 33, Ch. 443, L. 1987; amd. Sec. 26, Ch. 195, L. 1993.

Cross-References

Residence — rules for determining, 1-1-215.

Failure to return rented or leased personal property, 45-6-309.

61-5-307. Penalty for misdemeanor. (1) It is a misdemeanor for any person to violate any of the provisions of parts 1 through 3 of this chapter and 61-11-101 unless such violation is by this chapter or other law of this state declared to be a felony.

(2) Unless another penalty is in this chapter or by the laws of this state provided, every person convicted of a misdemeanor for the violation of any provision of parts 1 through 3 of this chapter and 61-11-101 shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months or by both such fine and imprisonment.

History: En. Sec. 43, Ch. 267, L. 1947; R.C.M. 1947, 31-159.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

61-5-308. Uniformity of interpretation. Parts 1 through 3 of this chapter and 61-11-101 and 61-11-102 shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact them.

History: En. Sec. 44, Ch. 267, L. 1947; R.C.M. 1947, 31-160.

61-5-309. Unlawful issuance of license or identification card. No person may create, publish, or otherwise manufacture a Montana driver's license or a Montana identification card authorized by 61-12-501 or color facsimile thereof or create, manufacture, or possess an engraved plate or other such device for the printing of a Montana driver's license or Montana identification card authorized by 61-12-501 or color facsimile thereof, except as authorized by the department.

History: En. Sec. 1, Ch. 248, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.

Cross-References

Penalty, 61-5-307.

Part 4

Driver License Compact

61-5-401. Driver License Compact. This part shall be known and may be cited as the "Driver License Compact".

Article I. Findings and Declaration of Policy

(1) The party states find that:

(a) the safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles;

(b) violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property;

(c) the continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles in whichever jurisdiction the vehicle is operated.

(2) It is the policy of each of the party states to:

(a) promote compliance with the laws, ordinances, and administrative rules relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles;

(b) make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the overall compliance with motor vehicle laws, ordinances, and administrative rules as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

Article II. Definitions

As used in this compact:

(1) "state" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico;

(2) "home state" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle;

(3) "conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance, or administrative rule, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

Article III. Reports of Conviction

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code, or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered or the conviction was a result of the forfeiture of bail, bond, or other security; and include any special findings made in connection therewith.

Article IV. Effect of Conviction

(1) The licensing authority in the home state, for the purposes of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home state, in the case of convictions for:

(a) manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(b) driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(c) any felony in the commission of which a motor vehicle is used;

(d) failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(2) As to other convictions, reported pursuant to Article III, the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state.

(3) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (1) of this article, such party state shall construe the denominations and descriptions appearing in subdivision (1) hereof as being applicable to and identifying those offenses or violations of a substantially similar nature, and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article.

Article V. Applications for New Licenses

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) the applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated;

(2) the applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of 1 year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) the applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

Article VI. Applicability of Other Laws

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance or to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a nonparty state.

Article VII. Compact Administrator and Interchange of Information

(1) The head of the licensing authority of each party state shall be the administrator of this compact for his state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(2) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

Article VIII. Entry Into Force and Withdrawal

(1) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(2) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 6 months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

Article IX. Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 154, L. 1963; R.C.M. 1947, 31-163.

Cross-References

Communication with other states — Governor sole official organ, 2-15-201.

Application for license — previous licensee, 61-5-107.

Suspending privileges of nonresidents, 61-5-203.

Suspending resident's license upon conviction in another state, 61-5-204.

Authority of Department of Justice to suspend license, 61-5-206.

No operation under foreign license during suspension or revocation in this state, 61-5-210.

61-5-402. Department as licensing authority — information and documents to be furnished. As used in the compact, the term "licensing authority" with reference to this state shall mean the department of justice. The department shall furnish to the appropriate authorities of any other party state any information or documents reasonably necessary to facilitate the administration of Articles III, IV, and V of the compact.

History: En. Sec. 2, Ch. 154, L. 1963; R.C.M. 1947, 31-164; amd. Sec. 1, Ch. 503, L. 1985.

61-5-403. Reimbursement of compact administrator. The compact administrator provided for in Article VII of the compact shall not be entitled to any additional compensation on account of his service as such administrator but shall be entitled to expenses incurred in connection with his duties and responsibilities as such administrator in the same manner as for expenses incurred in connection with any other duties or responsibilities of his office or employment.

History: En. Sec. 3, Ch. 154, L. 1963; R.C.M. 1947, 31-165.

Cross-References

Travel, meals, and lodging, Title 2, ch. 18, part 5.

61-5-404. Governor as executive head. As used in the compact, with reference to this state, the term "executive head" shall mean the governor.

History: En. Sec. 4, Ch. 154, L. 1963; R.C.M. 1947, 31-166.

61-5-405. Offenses furnishing ground for suspension or revocation of license — return to licensing jurisdiction of abstracts of court records and reports of conviction. (1) Items enumerated in Article IV(1), subsections (a), (b), (c), and (d) of 61-5-401 refer specifically to 45-5-103, 45-5-104, 61-8-401, the definition of felony as provided in 45-2-101, and 61-7-103, respectively.

(2) In addition to convictions mentioned in subsection (1), the department, for the purpose of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported as it would if the conduct had occurred in this state for:

(a) convictions of perjury or the making of a false affidavit relating to the ownership or operation of a motor vehicle (61-5-303); and

(b) three convictions of reckless driving committed within a period of 12 months (61-8-301).

(3) Court abstracts or reports of conviction received by the department that name an individual licensed in another jurisdiction must be forwarded to the jurisdiction of licensure. The department may not take action against the driver's license or driving privilege of the individual as may be required elsewhere in this title.

History: En. Sec. 6, Ch. 154, L. 1963; R.C.M. 1947, 31-168; amd. Sec. 98, Ch. 421, L. 1979; amd. Sec. 8, Ch. 485, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 4, Ch. 419, L. 1991; amd. Sec. 16, Ch. 354, L. 1995.

Cross-References

Perjury and other falsification in official matters, Title 45, ch. 7, part 2.

61-5-406. Review of administrative actions. Any act or omission of any official or employee of this state done or omitted pursuant to, or in enforcing, the provisions of the Driver License Compact shall be subject to review pursuant to the provisions of 61-5-211, but any review of the validity of any conviction reported pursuant to the compact shall be limited to establishing the identity of the person so convicted.

History: En. Sec. 8, Ch. 154, L. 1963; R.C.M. 1947, 31-169.

CHAPTER 6

RESPONSIBILITY OF VEHICLE USERS AND OWNERS

Part 1 — Financial Responsibility

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Part 2 — Liability of Vehicle Owner

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Chapter Cross-References

Replacement value of motor vehicle, 27-1-306.

Motor vehicle liability insurance, Title 33, ch. 23, part 2.

Part 1
Financial Responsibility

Part Cross-References

Attorney fees — motor vehicle claim, 25-10-303.

61-6-101. Short title. This part may be cited as the "Motor Vehicle Safety-Responsibility Act".

History: En. Sec. 41, Ch. 204, L. 1951; R.C.M. 1947, 53-457.

61-6-102. Definitions. The following words and phrases, when used in this part, have the meanings respectively ascribed to them in this section except in those instances where the context clearly indicates a different meaning:

(1) "Judgment" means any judgment that has become final by expiration without appeal of the time within which an appeal might have been perfected or by final affirmation on appeal rendered by a court of competent jurisdiction of any state or of the United States upon a cause of action arising out of the ownership, maintenance, or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.

(2) "License" means any license, temporary instruction permit, or temporary license issued under the laws of this state pertaining to the licensing of persons to operate motor vehicles.

(3) "Nonresident's operating privilege" means the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by him of a motor vehicle or the use of a motor vehicle owned by him in this state.

(4) "Proof of financial responsibility" means proof of ability to respond in damages for liability on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance, or use of a motor vehicle.

(5) "State" means any state, territory, or possession of the United States, the District of Columbia, or any province of the Dominion of Canada.

(6) "Ways of this state open to the public" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public travel and in common use by the public.

History: En. Sec. 1, Ch. 204, L. 1951; amd. Sec. 1, Ch. 30, L. 1967; R.C.M. 1947, 53-418(part); amd. Sec. 60, Ch. 421, L. 1979; amd. Sec. 1, Ch. 212, L. 1985.

61-6-103. Motor vehicle liability policy defined. (1) A "motor vehicle liability policy", as the term is used in this part, means an owner's or operator's policy of liability insurance, certified as provided in 61-6-133 or 61-6-134 as proof of financial responsibility and issued, except as otherwise provided in 61-6-134, by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.

(2) The owner's policy of liability insurance must:

(a) designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted; and

(b) insure the person named therein and any other person, as insured, using any motor vehicle or motor vehicles with the express or implied permission of the named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of the motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each motor vehicle, as follows:

(i) $25,000 because of bodily injury to or death of one person in any one accident and subject to said limit for one person;

(ii) $50,000 because of bodily injury to or death of two or more persons in any one accident; and

(iii) $10,000 because of injury to or destruction of property of others in any one accident.

(3) An operator's policy of liability insurance must insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to the operator's policy of liability insurance.

(4) A motor vehicle liability policy must state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period, and the limits of liability and contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this part as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this part.

(5) A motor vehicle liability policy need not insure any liability under any workers' compensation law or any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured or while engaged in the operation, maintenance, or repair of a motor vehicle or any liability for damage to property owned by, rented to, in charge of, or transported by the insured.

(6) A motor vehicle liability policy is subject to the following provisions, which need not be contained therein:

(a) The liability of the insurance carrier with respect to the insurance required by this part becomes absolute whenever injury or damage covered by the motor vehicle liability policy occurs. The policy may not be canceled or annulled as to the liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage. No statement made by the insured or on his behalf and no violation of the policy may defeat or void the policy.

(b) The satisfaction by the insured of a judgment for the injury or damage may not be a condition precedent to the right or duty of the insurance carrier to make payment on account of the injury or damage.

(c) The insurance carrier has the right to settle any claim covered by the policy, and if the settlement is made in good faith, the amount is deductible from the limits of liability specified in subsection (2)(b).

(d) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of this part constitute the entire contract between the parties.

(7) A motor vehicle policy is not subject to cancellation, termination, nonrenewal, or premium increase due to injury or damage incurred by the insured or operator unless the insured or operator is found to have violated a traffic law or ordinance of the state or a city, is found negligent or contributorily negligent in a court of law or by the arbitration proceedings contained in chapter 5 of Title 27, or pays damages to another party, whether by settlement or otherwise. In no event may a premium be increased during the term of the policy unless there is a change in exposure.

(8) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy, and the excess or additional coverage is not subject to the provisions of this part. With respect to a policy which grants the excess or additional coverage, the term "motor vehicle liability policy" applies only to that part of the coverage which is required by this section.

(9) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this part.

(10) Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(11) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers, which policies together meet such requirements.

(12) Any binder issued pending the issuance of a motor vehicle liability policy fulfills the requirements for such a policy.

(13) A reduced limits endorsement may not be issued by any company to be attached to any policy issued in compliance with this section.

History: En. Sec. 21, Ch. 204, L. 1951; amd. Sec. 4, Ch. 30, L. 1967; amd. Sec. 1, Ch. 177, L. 1973; amd. Sec. 1, Ch. 260, L. 1973; amd. Sec. 1, Ch. 295, L. 1974; amd. Sec. 1, Ch. 526, L. 1975; R.C.M. 1947, 53-438; amd. Sec. 1, Ch. 425, L. 1989.

Cross-References

Motor vehicle liability insurance, Title 33, ch. 23, part 2.

Required motor vehicle insurance, 61-6-301.

61-6-104. Uniformity of interpretation. This part shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

History: En. Sec. 39, Ch. 204, L. 1951; R.C.M. 1947, 53-456.

61-6-105. Department to administer law and make rules. The department shall administer and enforce the provisions of this part and may make rules necessary for its administration and may provide for hearings upon request of persons aggrieved by orders or acts of the department under the provisions of this part.

History: En. Sec. 2, Ch. 204, L. 1951; amd. Sec. 1, Ch. 164, L. 1957; R.C.M. 1947, 53-419(a), (b); amd. Sec. 61, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

61-6-106. Appeal to court. (1) At any time within 60 days after the rendition of any decision or order by the department under the provisions of this part, any party in interest may appeal to the district court of the judicial district of the state of Montana, in and for any county wherein any party in interest may reside or in which any party in interest which is a corporation may have its principal office, or place of business, and said appeal may be for the purpose of having the lawfulness of any order, decision, or act of the department inquired into and determined. The court shall determine whether the filing of an appeal shall operate as a stay of any order or decision of the department.

(2) Said appeal shall be taken by serving a written notice of said appeal upon the department, which said service shall be made by delivering a copy of such notice to the department and filing the original thereof with the clerk of the court to which said appeal is taken. A copy of such notice must also be served upon all other parties in interest, if there be any, by mailing the same to said parties in interest to such addresses of such parties as such parties shall have left with the department. If such parties shall have left no address with the department, then no service on such parties shall be required. The order of filing and service of said notice is immaterial.

(3) Immediately upon service upon said department of said notice, the department shall certify to said district court a complete record of all proceedings had by it with reference to the decision, order, or act appealed from, together with all official forms or documents in the possession of said department pertaining to said decision, order, or act and all correspondence and other written matter in the possession of said department pertaining to said decision, order, or act, with the clerk of the district court.

(4) Immediately upon the return of such certified matter, the district court shall fix a day for the hearing of said appeal and shall cause notice to be served upon the department and upon the appellant and also upon any other parties in interest upon whom service was required under the provisions of this section. The court may upon the hearing for a good cause shown permit evidence in addition to the matter certified by the department to the court, but in the absence of such permission from the court, the cause shall be heard on the matter certified to the court by the department. The trial of the matter shall be de novo, without a jury, and upon such trial the court shall determine whether or not the department regularly pursued its authority, whether or not the findings of the department ought to be sustained, and whether or not such findings are reasonable under all circumstances of the case. The department and each party in interest shall have the right to appear in the proceeding.

(5) If the court shall find from such trial, as aforesaid, that the findings and conclusions of the department are not in accordance with either the facts or the law or that they ought to be other or different from those made by the department or that any finding and conclusion or any decision, order, act, rule, or requirement of the department is unreasonable, the court shall set aside such finding, conclusion, decision, order, act, rule, or requirement of said department or shall modify or change the same as law and justice shall require, and the court shall also make and enter any finding, conclusion, order, or judgment that shall be required or shall be legal and proper in the premises. Either the department or the appellant or any other party in interest, if there be any, may appeal to the supreme court from any final order, judgment, or decree of said district court, which said appeal shall be taken in like manner as appeals are now taken in other civil actions to the supreme court.

(6) Upon such appeal, the supreme court shall make such orders in reference to a stay of proceedings as it finds to be just in the premises and may stay the operation of any order, judgment, or decree of said district court without requiring any bond or undertaking from the applicant for such stay. When any such cause is so appealed, it shall have precedence upon the calendar of said supreme court upon the record made in said district court and upon the matters certified to or which ought to have been certified by said department to said district court, and judgment and decree shall be entered therein as expeditiously as possible.

History: En. Sec. 2, Ch. 204, L. 1951; amd. Sec. 1, Ch. 164, L. 1957; R.C.M. 1947, 53-419(c); amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Administrative procedure — judicial review of contested cases, Title 2, ch. 4, part 7.

Supreme Court jurisdiction, Title 3, ch. 2, part 2.

District Court — appellate jurisdiction, 3-5-303.

Service of process, Title 25, ch. 3; Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

Montana Rules of Appellate Procedure, Title 25, ch. 21.

61-6-107. Repealed. Sec. 2, Ch. 467, L. 1989.

History: En. Sec. 3, Ch. 204, L. 1951; amd. Sec. 17, Ch. 121, L. 1965; amd. Sec. 1, Ch. 381, L. 1971; R.C.M. 1947, 53-420; amd. Sec. 1, Ch. 503, L. 1985.

61-6-108. Matters not to be evidence in civil suits. Neither the action taken by the department pursuant to this part nor the findings, if any, of the department upon which such action is based shall be referred to in any way or be any evidence of the negligence or due care of either party at the trial of any action at law to recover damages.

History: En. Sec. 11, Ch. 204, L. 1951; amd. Sec. 1, Ch. 184, L. 1974; R.C.M. 1947, 53-428; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Evidence, Title 26.

Liability for negligence as well as willful acts, 27-1-701.

Comparative negligence, 27-1-702.

61-6-109. Exceptions. This part shall not apply with respect to any motor vehicle owned by the United States, this state, or any political subdivision of this state or any municipality therein; or, except for 61-6-139, with respect to any motor vehicle which is subject to the provisions of 69-12-402, requiring insurance or other security.

History: En. Sec. 33, Ch. 204, L. 1951; amd. Sec. 3, Ch. 184, L. 1974; R.C.M. 1947, 53-450.

Cross-References

Public-owned vehicles exempt from license or registration fees, 61-3-321.

Number plates — publicly owned vehicles, 61-3-332.

61-6-110. Other relief not precluded. Nothing in this part shall be construed as preventing the plaintiff in any action at law from relying for relief upon the other processes provided by law.

History: En. Sec. 38, Ch. 204, L. 1951; R.C.M. 1947, 53-455.

Cross-References

Civil trials, Title 25, ch. 7.

61-6-111. Repealed. Sec. 9, Ch. 218, L. 1985.

History: En. Sec. 30, Ch. 204, L. 1951; R.C.M. 1947, 53-447.

61-6-112. Surrender of license. A person whose license has been suspended, whose policy of insurance or bond, when required under this part, has been canceled or terminated, or who neglects to furnish other proof upon request of the department shall immediately return the person's license to the department. If a licensee fails to return to the department the license as required by this section, then a peace officer may seize the license during an investigative stop or arrest and return the license to the department.

History: En. Sec. 31, Ch. 204, L. 1951; amd. Sec. 1, Ch. 107, L. 1957; R.C.M. 1947, 53-448; amd. Sec. 1, Ch. 218, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 16, Ch. 309, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 309 near end of second sentence after "officer" substituted "may seize the license during an investigative stop or arrest" for "or highway patrol officer to secure possession thereof"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

Cross-References

Motor vehicle liability insurance — limitations on basis for cancellation, 33-23-211.

Notice required for cancellation — exception — penalty, 33-23-212.

Notice to insured of ground for cancellation, 33-23-213.

Surrender and return of license, 61-5-209.

Report of convictions and suspension or revocation of driver's licenses — surrender of licenses, 61-11-101.

61-6-113 through 61-6-120 reserved.

61-6-121. Courts to report nonpayment of judgments. (1) Whenever any person fails within 60 days to satisfy any judgment, upon the written request of the judgment creditor or his attorney, it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this state to forward to the department immediately after the expiration of said 60 days a certified copy of such judgment.

(2) If the defendant named in any certified copy of a judgment reported to the department is a nonresident, the department shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registration certificates of the state of which the defendant is a resident.

History: En. Sec. 12, Ch. 204, L. 1951; R.C.M. 1947, 53-429; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Clerk of District Court — general duties, 3-5-501.

Judgment and subsequent procedure, Title 27, ch. 18, part 9.

61-6-122. Suspension for nonpayment of judgments — exceptions. (1) The department, upon the receipt of a certified copy of a judgment, shall suspend the license and any nonresident's operating privilege of any person against whom a judgment was rendered, except as provided in this section and in 61-6-125.

(2) If the judgment creditor consents in writing, in a form that the department prescribes, that the judgment debtor be allowed a license or a nonresident's operating privilege, the department may, in its discretion, allow the debtor a license or nonresident's operating privilege from the date of consent. The debtor's license or nonresident's operating privilege continues until the judgment creditor's consent is revoked in writing notwithstanding default in the payment of the judgment, or of any installments prescribed in 61-6-125, provided the judgment debtor furnishes proof of compliance with 61-6-301.

History: En. Sec. 13, Ch. 204, L. 1951; R.C.M. 1947, 53-430; amd. Sec. 2, Ch. 218, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 17, Ch. 309, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 309 in (2) in first sentence after "discretion" substituted "allow the debtor a license or nonresident's operating privilege" for "for 6 months" and at beginning of second sentence inserted "The debtor's license or nonresident's operating privilege continues" and at end substituted "compliance with 61-6-301" for "financial responsibility"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

Cross-References

Judgment and subsequent procedure, Title 27, ch. 18, part 9.

Debtor and creditor relationships, Title 31, ch. 2.

61-6-123. Suspension to continue until judgments paid and proof given — maximum period of suspension. A license or nonresident's operating privilege remains suspended and may not be renewed, nor may a license be issued in the name of a judgment debtor, including a judgment debtor not previously licensed, until each judgment is stayed, satisfied in full, or satisfied to the extent provided in this part, and until the person gives proof of compliance with 61-6-301 subject to the exemptions provided in 61-6-122 and 61-6-125 or 6 years have passed from date judgment was first entered as provided in 25-9-301 and the person has complied with 61-6-301 and 61-6-302.

History: En. Sec. 14, Ch. 204, L. 1951; amd. Sec. 1, Ch. 437, L. 1973; R.C.M. 1947, 53-431; amd. Sec. 5, Ch. 592, L. 1979; amd. Sec. 18, Ch. 309, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 309 near end after "proof of" substituted "compliance with 61-6-301" for "financial responsibility"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

Cross-References

Execution of judgment after 6 years, 25-13-102.

Period of suspension or revocation, 61-5-208.

61-6-124. Satisfaction of judgments. (1) Judgments herein referred to shall, for the purposes of this part only, be considered satisfied:

(a) when $25,000 has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident;

(b) when, subject to the limit of $25,000 because of bodily injury to or death of one person, the sum of $50,000 has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or

(c) when $5,000 has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident.

(2) Payments made in settlement of any claims because of bodily injury, death, or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this section.

History: En. Sec. 15, Ch. 204, L. 1951; amd. Sec. 3, Ch. 30, L. 1967; R.C.M. 1947, 53-432; amd. Sec. 62, Ch. 421, L. 1979.

Cross-References

Execution of judgment, Title 25, ch. 13.

Proceedings in aid of execution, Title 25, ch. 14.

Confession of judgment, Title 27, ch. 9, part 1.

Prejudgment attachment, Title 27, ch. 18.

61-6-125. Installment payment of judgments — default. (1) A judgment debtor upon due notice to the judgment creditor may apply to the court in which the judgment was rendered for the privilege of paying the judgment in installments. The court, in its discretion and without prejudice to any other legal remedies that the judgment creditor may have, may order payment in installments and fix the amounts and times of the payments.

(2) The department may not suspend a license or a nonresident's operating privilege and shall restore any license or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of compliance with 61-6-301 and obtains an order permitting the payment of the judgment in installments, and while the payment of any installment is not in default.

(3) If the judgment debtor fails to pay any installment as specified by a court order, then the department shall, upon notice of the default, suspend the license or nonresident's operating privilege of the judgment debtor until the judgment is satisfied, as provided in this part.

History: En. Sec. 16, Ch. 204, L. 1951; R.C.M. 1947, 53-433; amd. Sec. 3, Ch. 218, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 19, Ch. 309, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 309 in (2) after "proof of" substituted "compliance with 61-6-301" for "financial responsibility"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

Cross-References

Judgments for money, 25-13-201.

Enforcement of order to pay money, 25-13-204.

61-6-126 through 61-6-130 reserved.

61-6-131. When proof of financial responsibility required. (1) Whenever the department under any of the laws of this state revokes the license of any person, such license shall remain revoked and shall not at any time thereafter be renewed nor shall any license be thereafter issued to such person until permitted under the motor vehicle laws of this state and not then unless and until he shall give and thereafter maintain proof of financial responsibility.

(2) If a person is not licensed, but by the final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for any offense requiring the revocation of a license, no license shall be thereafter issued to such person until he shall give and thereafter maintain proof of financial responsibility.

(3) Whenever the department revokes a nonresident's operating privilege by reason of a conviction or forfeiture of bail, such privilege shall remain so revoked unless such person shall have previously given or shall immediately give and thereafter maintain proof of financial responsibility.

History: En. Sec. 17, Ch. 204, L. 1951; amd. Sec. 1, Ch. 236, L. 1961; R.C.M. 1947, 53-434; amd. Sec. 4, Ch. 218, L. 1985; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Conditions of bail — violation of conditions, Title 46, ch. 9, part 5.

Effect of conviction, Title 46, ch. 18, part 8.

Revocation, suspension, or cancellation of licenses, Title 61, ch. 5, part 2.

61-6-132. Alternate methods of giving proof. (1) Proof of financial responsibility when required under this part with respect to a motor vehicle or with respect to a person who is not the owner of a motor vehicle may be given by filing:

(a) a certificate of insurance as provided in 61-6-133 or 61-6-134;

(b) a bond as provided in 61-6-137;

(c) a certificate or deposit of money or securities as provided in 61-6-138; or

(d) a certificate of self-insurance, as provided in 61-6-143, supplemented by an agreement by the self-insurer that, with respect to accidents occurring while the certificate is in force, he will pay the same judgments and in the same amounts that an insurer would have been obligated to pay under an owner's motor vehicle liability policy if it had issued such a policy to said self-insurer.

(2) No motor vehicle shall be or continue to be registered in the name of any person required to file proof of financial responsibility unless such proof shall be furnished for such motor vehicle.

History: En. Sec. 18, Ch. 204, L. 1951; R.C.M. 1947, 53-435.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Money, 30-3-107.

Motor vehicle liability insurance, Title 33, ch. 23, part 2.

61-6-133. Certificate of insurance as proof. Proof of financial responsibility may be furnished by filing with the department the written certificate of any insurance carrier duly authorized to do business in this state certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall give the effective date of such motor vehicle liability policy, which date shall be the same as the effective date of the certificate, and shall designate by explicit description or by appropriate reference all motor vehicles covered thereby, unless the policy is issued to a person who is not the owner of a motor vehicle.

History: En. Sec. 19, Ch. 204, L. 1951; R.C.M. 1947, 53-436; amd. Sec. 5, Ch. 218, L. 1985; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Motor vehicle liability insurance, Title 33, ch. 23, part 2.

61-6-134. Certificate furnished by nonresident as proof. (1) The nonresident owner of a motor vehicle not registered in this state may give proof of financial responsibility by filing with the department a written certificate or certificates of an insurance carrier authorized to transact business in the state in which the motor vehicle or motor vehicles described in such certificate is registered, or if such nonresident does not own a motor vehicle, then in the state in which the insured resides, provided such certificate otherwise conforms to the provisions of this part, and the department shall accept the same upon condition that said insurance carrier complies with the following provisions with respect to the policies so certified:

(a) Said insurance carrier shall execute a power of attorney authorizing the department to accept service on its behalf of notice or process in any action arising out of a motor vehicle accident in this state.

(b) Said insurance carrier shall agree in writing that such policies shall be deemed to conform with the laws of this state relating to the terms of motor vehicle liability policies issued herein.

(2) If any insurance carrier not authorized to transact business in this state, which has qualified to furnish proof of financial responsibility, defaults in any said undertaking or agreements, the department shall not thereafter accept as proof any certificate of said carrier whether theretofore filed or thereafter tendered as proof, so long as such default continues.

History: En. Sec. 20, Ch. 204, L. 1951; R.C.M. 1947, 53-437; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Motor vehicle liability insurance, Title 33, ch. 23, part 2.

61-6-135. Notice of cancellation or termination of certified policy. When an insurance carrier has certified a motor vehicle liability policy under 61-6-133 or a policy under 61-6-134, the insurance so certified shall not be canceled or terminated until at least 10 days after a notice of cancellation or termination of the insurance so certified shall be filed in the office of the department, except that such a policy subsequently procured and certified shall on the effective date of its certification terminate the insurance previously certified with respect to any motor vehicle designated in both certificates.

History: En. Sec. 22, Ch. 204, L. 1951; R.C.M. 1947, 53-439; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Motor vehicle liability insurance — notice required for cancellation, 33-23-212.

Motor vehicle liability insurance — advance notice required for nonrenewal, 33-23-214.

61-6-136. Other policies not affected. (1) This part shall not be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of this state, and such policies, if they contain an agreement or are endorsed to conform to the requirements of this part, may be certified as proof of financial responsibility under this part.

(2) This part shall not be held to apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on his behalf of motor vehicles not owned by the insured.

History: En. Sec. 23, Ch. 204, L. 1951; R.C.M. 1947, 53-440.

Cross-References

Motor vehicle liability policies to include uninsured motorist coverage, 33-23-201.

61-6-137. Bond as proof of responsibility. (1) Proof of financial responsibility may be furnished by filing with the department the bond of a surety company duly authorized to transact business in the state or a bond with at least two individual sureties each owning real estate within this state and together having equities equal in value to at least twice the amount of such bond, which real estate shall be scheduled in the bond approved by a judge of a court of record. The bond shall be conditioned for payments in amounts and under the same circumstances as would be required in a motor vehicle liability policy and shall not be cancelable except after 10 days' written notice to the department. Upon the filing of notice to this effect by the department in the office of the county clerk and recorder of the county wherein such real estate is located, the bond shall constitute a lien in favor of the state upon the real estate so scheduled of any surety, which lien shall exist in favor of any holder of a judgment against the person who has filed the bond.

(2) The person in whose favor the lien exists may, for his own use and benefit and at his sole expense, bring an action or actions in the name of the state against the company or persons executing the bond, including an action or proceeding to foreclose any lien that may exist upon the real estate of any person who has executed such bond. The provisions of the Montana Rules of Civil Procedure, except insofar as they are inconsistent with the provisions of this part, are applicable to and constitute the rules of practice in the foreclosure actions or proceedings. The provisions of the Montana Rules of Civil Procedure relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this part, apply to the actions or proceedings.

History: En. Sec. 24, Ch. 204, L. 1951; R.C.M. 1947, 53-441; amd. Sec. 63, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Suretyship, Title 28, ch. 11, part 4.

Liens, Title 71, ch. 3.

61-6-138. Money or securities as proof of responsibility. (1) Proof of financial responsibility may be evidenced by the certificate of the state treasurer that the person named therein has deposited with him $55,000 in cash, or securities such as may legally be purchased by savings banks or for trust funds of a market value of $55,000. The state treasurer shall not accept any such deposit and issue a certificate therefor and the department shall not accept such certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides.

(2) Such deposit shall be held by the state treasurer to satisfy, in accordance with the provisions of this part, any execution on a judgment issued against such person making the deposit, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use, or operation of a motor vehicle after such deposit was made. Money or securities so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages as aforesaid.

History: En. Sec. 25, Ch. 204, L. 1951; R.C.M. 1947, 53-442; amd. Sec. 6, Ch. 218, L. 1985; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Ex officio State Treasurer, 2-15-1002.

General fiscal duties of State Treasurer, 17-1-111.

Execution of judgment, Title 25, ch. 13.

Prejudgment attachment, Title 27, ch. 18.

Securities regulation, Title 30, ch. 10.

61-6-139. Owner permitted to give proof for others. Whenever any person required to give proof of financial responsibility hereunder is or later becomes an operator in the employ of any owner, or is or later becomes a member of the immediate family or household of the owner, the department shall accept proof given by such owner in lieu of proof by such other person to permit such other person to operate a motor vehicle for which the owner has given proof as herein provided. The department shall designate the restrictions imposed by this section on the face of such person's license.

History: En. Sec. 26, Ch. 204, L. 1951; R.C.M. 1947, 53-443; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Employment defined, 39-2-101.

Restricted licenses, 61-5-113.

61-6-140. Substitution of proof of responsibility. The department shall consent to the cancellation of any bond or certificate of insurance or the department shall direct and the state treasurer shall return any money or securities to the person entitled thereto upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to this part.

History: En. Sec. 27, Ch. 204, L. 1951; R.C.M. 1947, 53-444; amd. Sec. 1, Ch. 503, L. 1985.

61-6-141. Repealed. Sec. 22, Ch. 309, L. 1999.

History: En. Sec. 28, Ch. 204, L. 1951; R.C.M. 1947, 53-445; amd. Sec. 1, Ch. 503, L. 1985.

61-6-142. Duration of proof — when money or securities may be canceled or returned. (1) The department shall direct and the state treasurer shall return to the person entitled thereto any money or securities deposited pursuant to this part as proof of financial responsibility, or the department shall waive the requirement of filing proof under this part, in any of the following events:

(a) at any time after 3 years from the date such proof was required when during the 3-year period preceding the request the department has not received record of a conviction or a forfeiture of bail which would require or permit the suspension or revocation of the license or nonresident's operating privilege of the person by or for whom such proof was furnished;

(b) in the event of the death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle; or

(c) in the event the person who has given proof surrenders his license to the department.

(2) However, the department shall not consent to the return of any money or securities in the event any action for damages upon a liability covered by such proof is then pending or any judgment upon any such liability is then unsatisfied, or in the event the person who has deposited such money or securities has, within 1 year immediately preceding such request, been involved as an operator or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts, or that he has been released from all of his liability, or has been finally adjudicated not to be liable for such injury or damage, shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the department.

(3) Whenever any person whose proof has been canceled or returned under subsection (1)(c) of this section applies for a license within a period of 3 years from the date proof was originally required, any such application shall be refused unless the applicant complies with the insurance or bond requirements under 61-6-301 and 61-6-302.

History: En. Sec. 29, Ch. 204, L. 1951; R.C.M. 1947, 53-446; amd. Sec. 6, Ch. 592, L. 1979; amd. Sec. 7, Ch. 218, L. 1985; amd. Sec. 1, Ch. 503, L. 1985.

61-6-143. Self-insurers. (1) Any person in whose name more than 25 motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the department as provided in subsection (2) of this section.

(2) The department may, in its discretion, upon the application of such a person, issue a certificate of self-insurance when it is satisfied that such person is possessed and will continue to be possessed of ability to pay judgments obtained against such person.

(3) Upon not less than 5 days' notice and a hearing pursuant to such notice, the department may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay any judgment within 30 days after such judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance.

History: En. Sec. 34, Ch. 204, L. 1951; R.C.M. 1947, 53-451; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Contested cases — notice, 2-4-601.

61-6-144. Assigned risk plans. After consultation with insurance companies authorized to issue automobile liability policies in this state, the commissioner of insurance shall approve a reasonable plan or plans for the equitable apportionment among such companies of applicants for such policies and for motor vehicle liability policies who are in good faith entitled to but are unable to procure such policies through ordinary methods. When any such plan has been approved, all such insurance companies shall subscribe thereto and participate therein. Any applicant for any such policy, any person insured under any such plan, and any insurance company affected, may appeal to the commissioner of insurance from any ruling or decision of the manager or committee designated to operate such plan. Any person aggrieved hereunder by any order or act of the commissioner of insurance may, within 10 days after notice thereof, file a petition in the district court of Lewis and Clark County for a review thereof. The court shall summarily hear the petition and may make any appropriate order or decree.

History: En. Sec. 35, Ch. 204, L. 1951; R.C.M. 1947, 53-452.

Cross-References

Administrative procedure — judicial review of contested cases, Title 2, ch. 4, part 7.

District Court jurisdiction, Title 3, ch. 5, part 3.

Insurance Commissioner and Department — general powers and duties, Title 33, ch. 1, part 3.

Residual market mechanism defined, 33-19-104.

61-6-145 through 61-6-150 reserved.

61-6-151. Violations — penalties. (1) Any person who shall forge or, without authority, sign any evidence of proof of financial responsibility or who files or offers for filing any such evidence of proof knowing or having reason to believe that it is forged or signed without authority shall be fined not more than $1,000 or imprisoned for not more than 1 year or both.

(2) Any person whose license or nonresident's operating privilege has been suspended or revoked under this part and who, during such suspension or revocation drives any motor vehicle upon any highway or knowingly permits any motor vehicle owned by such person to be operated by another upon any highway, except as permitted under this part, shall be fined not more than $500 or imprisoned not exceeding 6 months or both.

(3) Any person willfully failing to return a license as required in 61-6-112 shall be fined not more than $500 or imprisoned not to exceed 30 days or both.

(4) Any person who shall violate any provision of this part for which no penalty is otherwise provided shall be fined not more than $500 or imprisoned not more than 90 days or both.

History: (1) thru (3)En. Sec. 32, Ch. 204, L. 1951; amd. Sec. 2, Ch. 184, L. 1974; Sec. 53-449, R.C.M. 1947; (4)En. Sec. 43, Ch. 204, L. 1951; Sec. 53-458, R.C.M. 1947; R.C.M. 1947, 53-449, 53-458; amd. Sec. 8, Ch. 218, L. 1985.

Cross-References

Classification of offenses, 45-1-201.

Felony and misdemeanor defined, 45-2-101.

Part 2
Liability of Vehicle Owner

Part Cross-References

Liability, Title 27, ch. 1, part 7.

61-6-201. Liability of owner for negligence of employee driver. The owner of every vehicle running or traveling upon any highway or road for the conveyance of passengers is liable for all damage to person or property done by any person in his employment as a driver while driving such vehicle, whether done willfully or negligently or otherwise, in the same manner as such driver would be liable.

History: **En. Sec. 5, Ch. 8, Ch. 72, L. 1913; re-en. Sec. 5, Ch. 8, Ch. 141, L. 1915; re-en. Sec. 1748, R.C.M. 1921; Cal. Pol. C. Sec. 2936; re-en. Sec. 1748, R.C.M. 1935; R.C.M. 1947, 32-1112.**

Cross-References

Agency, Title 28, ch. 10.

Employment defined, 39-2-101.

General liability arising from employment relationship, Title 39, ch. 2, part 7.

Carriers of passengers, Title 69, ch. 11, part 2.

Part 3

Mandatory Liability Protection

Part Cross-References

Motor vehicle liability insurance, Title 33, ch. 23, part 2.

Professional tow trucks, Title 61, ch. 8, part 9.

61-6-301. Required motor vehicle insurance — family member exclusion. (1) (a) Except as provided in subsection (1)(b), an owner of a motor vehicle that is registered and operated in Montana by the owner or with the owner's permission shall continuously provide insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property suffered by any person caused by maintenance or use of a motor vehicle, as defined in 61-1-102, in an amount not less than that required by 61-6-103, or a certificate of self-insurance issued in accordance with 61-6-143.

(b) Notwithstanding the mandatory motor vehicle liability insurance protection provided for in subsection (1)(a), nothing in this part may be construed to prohibit the exclusion from insurance coverage of a named family member in a motor vehicle liability insurance policy.

(2) A motor vehicle owner who prefers to post an indemnity bond with the department in lieu of obtaining a policy of liability insurance may do so. The bond must guarantee that any loss resulting from liability imposed by law for bodily injury, death, or damage to property suffered by any person caused by accident and arising out of the operation, maintenance, and use of the motor vehicle sought to be registered must be paid within 30 days after final judgment is entered establishing the liability. The indemnity bond must guarantee payment in the amount provided for insurance under subsection (1).

(3) Any bond given in connection with this section is a continuing instrument and must cover the period for which the motor vehicle is to be registered and operated. The bond must be on a form approved by the commissioner of insurance and must be with a surety company authorized to do business in the state.

(4) It is unlawful for a person to operate a motor vehicle upon ways of this state open to the public without a valid policy of liability insurance in effect in an amount not less than that required by 61-6-103 unless the person has been issued a certificate of self-insurance under 61-6-143, has posted an indemnity bond with the department as provided in this section, or is operating a vehicle exempt under 61-6-303.

History: **En. Sec. 1, Ch. 592, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 2, Ch. 425, L. 1989; amd. Sec. 1, Ch. 393, L. 1995.**

Cross-References

Indemnity, Title 28, ch. 11, part 3.

Insurance Commissioner — general powers and duties, 33-1-311.

Light vehicle reregistration by mail, 61-3-535.

Suspension to continue until judgments paid and proof given, 61-6-123.

Duration of proof — when money or securities may be canceled or returned, 61-6-142.

Mandatory liability protection — exclusions, 61-6-303.

61-6-302. Proof of compliance. (1) The registration receipt required by 61-3-322 must contain a statement that unless the vehicle is eligible for an exemption under 61-6-303, it is unlawful to operate the vehicle without a valid motor vehicle liability insurance policy, a certificate of self-insurance, or a posted indemnity bond, as required by 61-6-301.

(2) Each person shall carry in a motor vehicle being operated by the person an insurance card approved by the department but issued by the insurance carrier to the motor vehicle owner as proof of compliance with 61-6-301. A motor vehicle operator shall exhibit the insurance card upon demand of a justice of the peace, a city or municipal judge, a peace officer, a highway patrol officer, or a field deputy or inspector of the department. A person commits an offense under this subsection if the person fails to carry the insurance card in a motor vehicle or fails to exhibit the insurance card upon demand of a person specified in this subsection. However, a person charged with violating this subsection may not be convicted if the person produces in court or the office of the arresting officer proof of insurance valid at the time of arrest.

History: En. Sec. 2, Ch. 592, L. 1979; amd. Sec. 1, Ch. 409, L. 1981; amd. Sec. 36, Ch. 614, L. 1981; amd. Sec. 5, Ch. 348, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 35, Ch. 611, L. 1987; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 1, Ch. 278, L. 1993; amd. Sec. 4, Ch. 365, L. 1993; amd. Sec. 2, Ch. 393, L. 1995.

Cross-References

Duties of County Treasurer, 7-6-2111.

Notice required for cancellation — motor vehicle liability insurance, 33-23-212.

Application for registration, 61-3-303.

License to be carried and exhibited on demand, 61-5-116.

Suspension to continue until judgments paid and proof given, 61-6-123.

Duration of proof — when money or securities may be canceled or returned, 61-6-142.

61-6-303. Exempt vehicles. The following vehicles and their drivers are exempt from the provisions of 61-6-301:

(1) a vehicle owned by the United States government or any state or political subdivision;

(2) a vehicle for which cash, securities, or a bond has been deposited or filed with the department upon such terms and conditions providing the same benefits available under a required motor vehicle liability insurance policy;

(3) a vehicle owned by a self-insurer certified as provided in 61-6-143;

(4) an implement of husbandry or special mobile equipment that is only incidentally operated on a highway or property open to use by the public;

(5) a vehicle operated upon a highway only for the purpose of crossing such highway from one property to another;

(6) a commercial vehicle registered or proportionally registered in this and any other jurisdiction, provided that vehicle is covered by a motor vehicle liability insurance policy complying with the laws of another jurisdiction in which it is registered;

(7) a motorcycle or quadricycle;

(8) a vehicle moved solely by human or animal power;

(9) a vehicle owned by a nonresident if it is currently registered in the owner's resident jurisdiction and he is in compliance with the motor vehicle liability insurance requirements, if any, of that jurisdiction.

History: En. Sec. 3, Ch. 592, L. 1979; amd. Sec. 2, Ch. 212, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 34, Ch. 516, L. 1985.

Cross-References

Motorcycle defined, 61-1-105.

Bicycle defined, 61-1-123.

Quadricycle defined, 61-1-133.

Public-owned vehicles exempt from registration, 61-3-321.

Special mobile equipment — exemption from registration, 61-3-431.

Proportional registration of fleet vehicles, 61-3-721.

61-6-304. Penalties. (1) Conviction of a first offense under 61-6-301 or 61-6-302 is punishable by a fine of not less than $250 or more than $500 or by imprisonment in the county jail for not more than 10 days, or both. A second conviction is punishable by a fine of $350 or by imprisonment in the county jail for not more than 10 days, or both. A third or subsequent conviction is punishable by a fine of $500 or by imprisonment in the county jail for not more than 6 months, or both.

(2) Upon a second or subsequent conviction under 61-6-301 or 61-6-302, the sentencing court shall order the surrender of the vehicle registration receipt and license plates for the vehicle operated at the time of the offense if that vehicle was operated by the registered owner or a member of the registered owner's immediate family or by a person whose operation of that vehicle was authorized by the registered owner. The court shall send the receipt and plates, along with a copy of the complaint and dispositional order, to the department, which shall immediately suspend the receipt and plates for a period of 90 days from the date of a second conviction or 180 days from the date of a third or subsequent conviction. The receipt and plates may not be reinstated until the expiration of that period and until proof of compliance with 61-6-301 is furnished to the department, but if the vehicle is transferred to a new owner, the new owner is entitled to register the vehicle.

(3) Upon a fourth and subsequent conviction under 61-6-301 or 61-6-302, the court shall order the surrender of the driver's license of the offender, if the vehicle operated at the time of the offense was registered to the offender or a member of the offender's immediate family. The court shall send the driver's license, along with a copy of the complaint and the dispositional order, to the department, which shall immediately suspend the driver's license. The department may not reinstate a driver's license suspended under this subsection until the registered owner provides the department proof of compliance with 61-6-301 and the department determines that the registered owner is otherwise eligible for licensure.

(4) The court may suspend a required fine only upon a determination that the offender is or will be unable to pay the fine.

(5) A court may not defer imposition of penalties provided by this section.

(6) An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction.

History: En. Sec. 4, Ch. 592, L. 1979; amd. Sec. 2, Ch. 409, L. 1981; amd. Sec. 178, Ch. 575, L. 1981; amd. Sec. 3, Ch. 212, L. 1985; amd. Sec. 1, Ch. 440, L. 1985; amd. Sec. 1,

Ch. 503, L. 1985; amd. Sec. 1, Ch. 155, L. 1987; amd. Sec. 5, Ch. 365, L. 1993; amd. Sec. 3, Ch. 393, L. 1995; amd. Sec. 1, Ch. 534, L. 1995; amd. Sec. 1, Ch. 452, L. 1997.

Cross-References

Indemnity, Title 28, ch. 11, part 3.

Motor vehicle liability insurance, Title 33, ch. 23, part 2.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Ways of this state open to the public defined, 61-6-102.

CHAPTER 7

ACCIDENTS AND ACCIDENT REPORTS

Part 1 — Uniform Accident Reporting Act

61-7-101. Short title.
61-7-102. Application.
61-7-103. Accidents involving death or personal injuries.
61-7-104. Accident involving damage to vehicle.
61-7-105. Duty to give information and render aid.
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61-7-108. Immediate notice of accidents.
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61-7-112. Coroners and medical examiners to report.
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61-7-115. Department to tabulate and analyze accident reports.
61-7-116. Any incorporated city permitted to require accident reports.
61-7-117. Uniformity of interpretation.
61-7-118. Penalty for violation.

Part 1

Uniform Accident Reporting Act

61-7-101. Short title. This part will be cited as the "Uniform Accident Reporting Act".

History: En. Sec. 18, Ch. 210, L. 1939; R.C.M. 1947, 32-1217.

61-7-102. Application. The provisions of this part shall apply upon highways and elsewhere throughout the state.

History: En. Sec. 22, Ch. 263, L. 1955; R.C.M. 1947, 32-2124(part).

Cross-References

Highway code, Title 60, ch. 1.

Highway defined, 61-1-201.

61-7-103. Accidents involving death or personal injuries. (1) The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible, but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of 61-7-105. Every such stop shall be made without obstructing traffic more than is necessary.

(2) Any person failing to stop or to comply with said requirements under such circumstances shall upon conviction be punished by imprisonment for not less than 30 days or more than 1 year or by a fine of not less than $100 or more than $5,000 or by both such fine and imprisonment.

(3) The department shall revoke the license or permit to drive of any resident and any nonresident operating privilege of any person so convicted for the period prescribed in 61-5-208.

History: **En. Sec. 3, Ch. 210, L. 1939; Subd. (c) amd. Sec. 1, Ch. 212, L. 1947; amd. Sec. 2, Ch. 256, L. 1959; R.C.M. 1947, 32-1202; amd. Sec. 1, Ch. 503, L. 1985.**

Cross-References

Residence — rules for determining, 1-1-215.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Homicide, Title 45, ch. 5, part 1.

Misdemeanor — no penalty specified, 46-18-212.

Offenses furnishing ground for suspension or revocation of license, 61-5-405.

61-7-104. Accident involving damage to vehicle. (1) The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible and shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of 61-7-105. Every such stop shall be made without obstructing traffic more than is necessary.

(2) Any person failing to stop or comply with said requirements under such circumstances shall be guilty of a misdemeanor.

History: **En. Sec. 4, Ch. 210, L. 1939; R.C.M. 1947, 32-1203.**

61-7-105. Duty to give information and render aid. The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his name, address, and the registration number of the vehicle he is driving and shall upon request and if available exhibit his driver's license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.

History: **En. Sec. 5, Ch. 210, L. 1939; R.C.M. 1947, 32-1204; amd. Sec. 34, Ch. 443, L. 1987.**

Cross-References

Limits on liability for emergency care rendered at scene of accident or emergency, 27-1-714.

Highway patrol jurisdiction, Title 44, ch. 1, part 10.

Certificates of registration, 61-3-322.

License to be carried and exhibited on demand, 61-5-116.

Habitual traffic offender defined, 61-11-203.

61-7-106. Duty upon striking unattended vehicle. The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof.

History: **En. Sec. 6, Ch. 210, L. 1939; R.C.M. 1947, 32-1205.**

61-7-107. Duty upon striking fixtures or other property upon a highway. The driver of any vehicle involved in an accident resulting only in damage to fixtures or other property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address and of the registration number of the vehicle he is driving and shall upon request and if available exhibit his driver's license and shall make report of such accident when and as required in 61-7-109.

History: **En. Sec. 7, Ch. 210, L. 1939; amd. Sec. 3, Ch. 256, L. 1959; R.C.M. 1947, 32-1206; amd. Sec. 35, Ch. 443, L. 1987.**

61-7-108. Immediate notice of accidents. The driver of a vehicle involved in an accident resulting in injury to or death of any person or property damage to an apparent extent of $500 or more shall immediately by the quickest means of communication give notice of the accident to the local police department if the accident occurs within a municipality, otherwise to the office of the county sheriff or the nearest office of the highway patrol.

History: **En. Sec. 8, Ch. 210, L. 1939; amd. Sec. 4, Ch. 256, L. 1959; R.C.M. 1947, 32-1207; amd. Sec. 1, Ch. 59, L. 1987; amd. Sec. 1, Ch. 115, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 115 in first sentence increased amount of damage that must be sustained in accident before driver is required to report from $250 to $500; and made minor changes in style. Amendment effective January 1, 2000.

Cross-References

Duties of Sheriff, 7-32-2121.

Municipal police force, Title 7, ch. 32, part 41.

Highway patrol jurisdiction, Title 44, ch. 1, part 10.

61-7-109. Written reports of accidents — additional information — form of report. (1) The operator of a motor vehicle that is in any manner involved in an accident within this state in which a person is killed or injured or in which damage to the property of a person in excess of $1,000 is sustained shall, within 10 days after the accident, report the matter in writing to the department unless the accident was investigated and reported by a law enforcement officer as provided in subsection (3).

(2) The department may require the driver of a vehicle involved in an accident of which report must be made as provided in this section to file supplemental reports whenever the original report is insufficient and may require witnesses of accidents to render reports.

(3) A law enforcement officer who in the regular course of duty investigates a motor vehicle accident in which a person is killed or injured or in which damage to the property of a person exceeds $1,000, either at the time of and at the scene of the accident or after the accident by interviewing participants or witnesses, shall within 10 days after completing the investigation forward a written report of the accident to the department.

(4) The form of the accident report required under this section must contain information sufficient to enable the department to determine whether the requirements for the deposit of security for safety responsibility are inapplicable by reason of the existence of insurance or other exemptions specified in chapter 6 of this title.

(5) A report required by subsection (1) or (2) may not be used as evidence in any trial, civil or criminal, arising out of an accident.

History: En. Sec. 9, Ch. 210, L. 1939; amd. Sec. 5, Ch. 256, L. 1959; amd. Sec. 1, Ch. 52, L. 1971; R.C.M. 1947, 32-1208; amd. Sec. 64, Ch. 421, L. 1979; amd. Sec. 1, Ch. 299, L. 1983; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 2, Ch. 59, L. 1987; amd. Sec. 70, Ch. 83, L. 1989; amd. Sec. 1, Ch. 486, L. 1989; amd. Sec. 2, Ch. 115, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 115 in first sentences of (1) and (3) increased amount of property damage that must be sustained before officer is required to file written report from $400 to $1,000; and made minor changes in style. Amendment effective January 1, 2000.

Cross-References

Local government law enforcement, Title 7, ch. 32.

Accidents involving snowmobiles, 23-2-635.

State law enforcement, Title 44.

Records and reports of convictions, Title 61, ch. 11.

61-7-110. When driver unable to report. (1) An accident report is not required under this part from any person who is physically incapable of making such report during the period of such incapacity.

(2) Whenever the driver of a vehicle is physically incapable of giving an immediate notice of an accident as required in 61-7-108, and there was another occupant in the vehicle at the time of the accident capable of doing so, such occupant shall make or cause to be given the notice not given by the driver.

(3) Whenever the driver is physically incapable of making a written report of an accident as required in 61-7-109, and such driver is not the owner of the vehicle, then the owner of the vehicle involved in such accident shall within 10 days after learning of such accident, make such report not made by the driver.

(4) Any person who gives information in reports as required in 61-7-109 or in this section, knowing or having reason to believe that such information is false, shall be fined not more than $500 or imprisonment for not more than 6 months or both.

History: En. Sec. 10, Ch. 210, L. 1939; amd. Sec. 6, Ch. 256, L. 1959; R.C.M. 1947, 32-1209.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

61-7-111. Accident report forms. (1) The department shall prepare and, upon request, supply to police departments, coroners, medical examiners, sheriffs, garages, and other suitable agencies or individuals forms for accident reports required hereunder, appropriate with respect to the persons required to make such reports and the purposes to be served. The written reports to be made by persons involved in accidents and by investigating officers shall call for sufficiently detailed information to disclose with reference to a traffic accident the causes, conditions then existing, and the persons and vehicles involved.

(2) Every accident report required to be made in writing shall be made on the appropriate form approved by the department and shall contain all of the information required therein unless not available.

(3) The department may suspend the license or permit to drive of any resident or the nonresident operating privilege of any person failing to report an accident as herein provided until such report has been filed.

History: En. Sec. 11, Ch. 210, L. 1939; amd. Sec. 7, Ch. 256, L. 1959; R.C.M. 1947, 32-1210; amd. Sec. 31, Ch. 7, L. 1979; amd. Sec. 2, Ch. 299, L. 1983; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Suspension of licenses, 61-5-203, 61-5-204.

Records to be kept by Department of Justice, 61-11-102.

61-7-112. Coroners and medical examiners to report. Each coroner, medical examiner, or other official performing like functions shall, on or before the 10th day of each month, report in writing to the department the deaths of all persons within his respective jurisdiction during the preceding calendar month as the result of traffic accidents, giving the time and place of each accident and the circumstances relating thereto.

History: En. Sec. 12, Ch. 210, L. 1939; amd. Sec. 8, Ch. 256, L. 1959; R.C.M. 1947, 32-1211; amd. Sec. 32, Ch. 7, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Office of County Coroner, Title 7, ch. 4, part 29.

Vital statistics — death, Title 50, ch. 15, part 4.

Cadavers and autopsies, Title 50, ch. 21, part 1.

Records to be kept by Department of Justice, 61-11-102.

61-7-113. Garages to report. The person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been struck by any bullet or involved in an accident of which report must be made as provided in 61-7-109 shall report to the department within 24 hours after such motor vehicle is received, giving the engine number, registration number, and the name and address of the owner or operator of such vehicle.

History: En. Sec. 13, Ch. 210, L. 1939; R.C.M. 1947, 32-1212; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Weapons, Title 45, ch. 8, part 3.

Certificate of ownership — contents, 61-3-202.

Certificates of registration, 61-3-322.

Records to be kept by Department of Justice, 61-11-102.

61-7-114. Accident reports confidential. (1) All required accident reports and supplemental reports must be without prejudice to the individual reporting and must be for the confidential use of the department or other governmental agencies for accident prevention, roadway design, motor carrier safety monitoring purposes, or for the administration of the laws of this state relating to the deposit of security and proof of financial responsibility by persons driving or the owners of motor vehicles. The department may disclose the identity of a person involved in an accident when the identity is not otherwise known or when the person denies being present at the accident.

(2) Except as provided in this section, all accident reports and supplemental information filed as required by this part are confidential and not open to general public inspection. Copying of lists of reports is not permitted. The report and supplemental information filed by law enforcement personnel, as required by this part, may be examined and copied, without obtaining a court order, by:

(a) a person named in the report or involved in the accident;

(b) the representative of the person referred to in subsection (2)(a), designated in writing, or the insurance carrier of that person;

(c) a party to a civil action arising from the accident; or

(d) the executor, the administrator, or the attorney representing the executor or administrator if the person is deceased.

History: **En. Sec. 14, Ch. 210, L. 1939; amd. Sec. 9, Ch. 256, L. 1959; amd. Sec. 1, Ch. 142, L. 1973; R.C.M. 1947, 32-1213; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 2, Ch. 486, L. 1989; amd. Sec. 4, Ch. 105, L. 1997.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Records of officers open to public inspection, 2-6-104.

Evidence, Title 26.

When proof of financial responsibility required, 61-6-131.

Records to be kept by Department of Justice, 61-11-102.

Personal representative — powers and duties, Title 72, ch. 3, part 6.

61-7-115. Department to tabulate and analyze accident reports. The department shall tabulate and may analyze all accident reports and shall publish annually or at more frequent intervals statistical information based thereon as to the number and circumstances of traffic accidents.

History: **En. Sec. 15, Ch. 210, L. 1939; R.C.M. 1947, 32-1214; amd. Sec. 1, Ch. 503, L. 1985.**

Cross-References

Duties of Department of Justice — records, 61-3-101.

Records and reports of convictions, Title 61, ch. 11.

61-7-116. Any incorporated city permitted to require accident reports. Any incorporated city, town, village, or other municipality may by ordinance require that the driver of a vehicle involved in an accident shall also file with a designated city department a report of such accident or a copy of any report herein required to be filed with the department of justice. All such reports shall be for the confidential use of the city department and subject to the provisions of 61-7-114.

History: **En. Sec. 16, Ch. 210, L. 1939; R.C.M. 1947, 32-1215; amd. Sec. 1, Ch. 503, L. 1985.**

Cross-References

Municipalities — powers, 7-1-4124.

Public records, 7-1-4144.

Organization and incorporation of new municipalities, Title 7, ch. 2, part 41.

61-7-117. Uniformity of interpretation. This part shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: **En. Sec. 17, Ch. 210, L. 1939; R.C.M. 1947, 32-1216.**

61-7-118. Penalty for violation. (1) A person violating any provision of 61-7-104 through 61-7-110 or 61-7-112 through 61-7-114 is guilty of a misdemeanor. Upon a first conviction, the offender shall be punished by a fine of not less than $10 or more than $100 or by imprisonment for not more than 10 days. For a second conviction within 1 year thereafter, the offender shall be punished by a fine of not less than $25 or more than $200 or by imprisonment for not more than 20 days or by both such fine and imprisonment. Upon a third or subsequent conviction within 1 year of the first conviction, an offender shall be punished by a fine of not less than $50 or more than $500 or by imprisonment for not more than 6 months or by both such fine and imprisonment.

(2) Subject to the limitations of 46-18-231(3), an offender who fails to pay a fine shall be imprisoned in the county jail in the county in which the offense was committed, and the punishment shall be commuted at the rate of 1 day's incarceration for each $10 of the fine.

History: **En. Sec. 3, Ch. 299, L. 1983.**

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

CHAPTER 8

TRAFFIC REGULATION

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Chapter Cross-References

Parking citations within capitol complex, 2-17-816.

Municipal trafficways and public grounds, Title 7, ch. 14, part 41.

Special parking permits for the handicapped, 49-4-301 through 49-4-306.

Part 1
General Provisions

61-8-101. Application — exceptions. (1) As used in this chapter, "ways of this state open to the public" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public travel that is in common use by the public.

(2) The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

(a) where a different place is specifically referred to in a given section;

(b) the provisions of 61-8-301 and 61-8-401(1)(b), (1)(c), and (2), with regard to operating a vehicle while under the influence of drugs, apply anywhere within this state;

(c) the provisions of 61-8-301 and 61-8-401 except subsections (1)(b), (1)(c), and (2) thereof, and 61-8-402 through 61-8-405, with regard to operating a vehicle while under the influence of alcohol, apply upon all ways of this state open to the public.

(3) The operation of motor vehicles directly across the public roads and highways of this state, especially as required in the transportation of natural resource products, including agricultural products and livestock, shall not be considered to be the operation of such vehicles on the public roads and highways of this state or on ways of this state open to the public, provided that such crossings are adequately marked with warning signs or devices. Such crossings are subject to provisions relating to stopping before entry and to restoration of any damage as may reasonably be prescribed by the state or local agency in control of safety of operation of the public highway involved.

History: (1)En. Sec. 22, Ch. 263, L. 1955; Sec. 32-2124, R.C.M. 1947; (2)En. Sec. 4, Ch. 247, L. 1959; Sec. 32-2124.1, R.C.M. 1947; R.C.M. 1947, 32-2124(part), 32-2124.1; amd. Sec. 65, Ch. 421, L. 1979; amd. Sec. 1, Ch. 659, L. 1983; amd. Sec. 3, Ch. 698, L. 1983.

Cross-References

Highway code, Title 60, ch. 1.

Flagger escorts — livestock on highways, 60-7-204.

Highway defined, 61-1-201.

Definition of alcohol concentration, 61-8-407.

61-8-102. Uniformity of interpretation. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 155, Ch. 263, L. 1955; R.C.M. 1947, 32-21-158.

61-8-103. Provisions uniform throughout state — power of local authorities. The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein and no local authority shall enact or enforce any ordinance, rule, or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this chapter.

History: En. Sec. 27, Ch. 263, L. 1955; amd. Sec. 1, Ch. 201, L. 1957; R.C.M. 1947, 32-2130.

Cross-References

Counties — promulgation and enforcement of rules, 7-5-2102.

Municipal ordinances, Title 7, ch. 5, part 42.

Local traffic-control devices, 61-8-206.

When local authorities may and shall alter limits, 61-8-310.

When local authorities may restrict right to use roadway, 61-10-128.

Powers of local authorities to regulate traffic, 61-12-101.

61-8-104. Required obedience to traffic laws. It is unlawful and, unless otherwise declared in this chapter with respect to particular offenses, it is a misdemeanor punishable as provided in 61-8-711 for any person to do any act forbidden or fail to perform any act required in this chapter.

History: En. Sec. 23, Ch. 263, L. 1955; R.C.M. 1947, 32-2125; amd. Sec. 1, Ch. 40, L. 1991.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

61-8-105. Obedience to peace officers, highway patrol officers, and public safety workers. A person may not willfully fail or refuse to comply with a lawful order or direction of a peace officer, highway patrol officer, or public safety worker pertaining to the use of the highways by traffic. For purposes of this section, "public safety worker" means a person who is authorized to provide assistance at the scene of an incident that requires traffic control and who is either a member of a paid or volunteer fire department, an emergency medical service provider, a member of a search and rescue team, or a civilian accident investigator appointed by a law enforcement agency.

History: En. Sec. 24, Ch. 263, L. 1955; R.C.M. 1947, 32-2126; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 2, Ch. 431, L. 1997.

Cross-References

Sheriff's Department, Title 7, ch. 32, part 21.

Municipal police force, Title 7, ch. 32, part 41.

Highway patrol jurisdiction, Title 44, ch. 1, part 10.

Obstructing peace officer, 45-7-302.

Obstructing justice, 45-7-303.

Failure to aid peace officer, 45-7-304.

Obedience to police officers and highway patrol officers, 61-9-105.

61-8-106. Responsibility of public officers and employees. (1) The provisions of this chapter applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this state, or any county, city, or town, district, or any other political subdivision of the state, except as provided in this section and subject to such specific exceptions as are set forth in this chapter with reference to authorized emergency vehicles.

(2) Unless specifically made applicable, the provisions of this chapter except those contained in part 5 of chapter 8 shall not apply to persons, teams, motor vehicles, and other equipment while actually engaged in work upon the surface of a highway but shall apply to such persons and vehicles when traveling to or from such work.

History: En. Sec. 25, Ch. 263, L. 1955; R.C.M. 1947, 32-2127.

Cross-References

Department of Transportation — general powers and duties, Title 60, ch. 2, part 2.

Authorized emergency vehicles defined, 61-1-119.

61-8-107. Police vehicles and authorized emergency vehicles. (1) The driver of a police vehicle or authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(2) The driver of a police vehicle or authorized emergency vehicle may:

(a) park or stand, irrespective of the provisions of this chapter;

(b) proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(c) exceed the speed limits so long as he does not endanger life or property;

(d) disregard regulations governing direction of movement or turning in specified directions.

(3) The exemptions granted to a police vehicle or authorized emergency vehicle apply only when the vehicle is making use of an audible or visual signal, or both, meeting the requirements of 61-9-402.

(4) The foregoing provisions shall not relieve the driver of a police vehicle or authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.

History: En. Sec. 25.1, Ch. 263, L. 1955; amd. Sec. 1, Ch. 169, L. 1957; amd. Sec. 2, Ch. 153, L. 1975; R.C.M. 1947, 32-2128; amd. Sec. 1, Ch. 11, L. 1981.

Cross-References

Department of Justice to furnish equipment, 44-1-105.

Police vehicle defined, 61-1-118.

Authorized emergency vehicles defined, 61-1-119.

Audible and visual signals on vehicles, 61-9-402.

61-8-108. Traffic laws applicable to persons driving animal-drawn vehicles. Every person driving an animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter, except those provisions of this chapter which by their very nature can have no application.

History: En. Sec. 26, Ch. 263, L. 1955; R.C.M. 1947, 32-2129.

Cross-References

Vehicle defined, 61-1-103.

Traffic laws applicable to persons driving animal-drawn vehicles, 61-9-107.

61-8-109. Rights of owners of real property not affected — when. Nothing in this chapter shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner from prohibiting such use or from requiring other or different or additional conditions than those specified in this chapter, or otherwise regulating such use as may seem best to such owner.

History: En. Sec. 29, Ch. 263, L. 1955; R.C.M. 1947, 32-2132.

Cross-References

Private road or driveway, 61-1-205.

61-8-110. Forest development road, special service road defined. For the purpose of 61-8-111 and 61-8-112 a "forest development road" is defined as a road located on national forest lands or on a right-of-way acquired by the United States and used for the protection, administration, and utilization of the national forests and other lands administered by the United States forest service; and a "special service road" is defined as a forest development road or segment thereof, the right-of-way for which is controlled by the United States and which is not a part of the highway system of the state or of a county or other public road authority of this state, designated by the forest service, pursuant to the regulations of the secretary of the United States department of agriculture, as a special service road for the purpose of controlling and regulating its use to accomplish the purposes of the secretary of agriculture's regulations applicable to the administration of the forest development transport system.

History: En. Sec. 1, Ch. 139, L. 1971; R.C.M. 1947, 32-2124.3.

61-8-111. State laws applicable on forest development roads — enforcement. Forest development roads in the state, whether or not they meet the definition of a public highway by the laws of this state, are subject to the traffic laws of this state and the Montana highway patrol and county sheriffs of this state shall have jurisdiction thereon to investigate accidents and enforce the Montana traffic laws.

History: En. Sec. 2, Ch. 139, L. 1971; R.C.M. 1947, 32-2124.4.

Cross-References

Sheriff's Department, Title 7, ch. 32, part 21.

Highway patrol jurisdiction, Title 44, ch. 1, part 10.

Public highway, 61-1-202.

61-8-112. Special service roads not subject to state law enforcement — when. When forest development roads, or segments thereof, are designated as special service roads by the United States forest service and by such designation are subjected to traffic rules in addition to or in conflict with the Montana traffic laws, neither the additional nor conflicting traffic rules so prescribed by the forest service nor the Montana traffic law with which they conflict shall be within the jurisdiction of law enforcement officers of this state as to such special service road.

History: En. Sec. 3, Ch. 139, L. 1971; R.C.M. 1947, 32-2124.5.

Cross-References

Cession and retrocession of jurisdiction, Title 2, ch. 1, part 2.

Part 2

Traffic-Control Devices

Part Cross-References

Official traffic-control devices, 61-1-403.

Traffic safety program, Title 61, ch. 2, part 1.

61-8-201. Obedience to traffic-control devices — exception for emergency vehicles and funeral processions. (1) The driver of a vehicle shall obey the instructions of an official traffic-control device applicable to his vehicle and placed in accordance with the provisions of this chapter unless otherwise directed by a highway patrol officer or police officer, subject to the exceptions granted in this chapter to the driver of an authorized emergency vehicle and to the driver of a motor vehicle in a funeral procession.

(2) A provision of this chapter for which signs are required may not be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not

state the signs are required, the section is effective even though no signs are erected or in place.

History: En. Sec. 33, Ch. 263, L. 1955; R.C.M. 1947, 32-2136; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 1, Ch. 338, L. 1991.

Cross-References

Authorized emergency vehicles defined, 61-1-119.

61-8-202. Department of transportation to adopt sign manual. The department of transportation shall adopt a manual for a uniform system of traffic-control devices consistent with this chapter for use upon highways within the state. This uniform system shall correlate with and so far as possible conform to the manual on uniform traffic control devices, as amended.

History: En. Sec. 30, Ch. 263, L. 1955; amd. Sec. 1, Ch. 241, L. 1959; amd. Sec. 52, Ch. 316, L. 1974; R.C.M. 1947, 32-2133; amd. Sec. 1, Ch. 37, L. 1981; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

General powers of Department of Transportation, 60-2-201.

Examination of applicants for driver's license, 61-5-110.

61-8-203. Department of transportation to sign all state highways. (1) The department of transportation shall place and maintain traffic-control devices, conforming to its manual and specifications, upon all state highways it considers necessary to indicate and to carry out this chapter and chapter 9 or to regulate, warn, or guide traffic.

(2) A local authority may not place or maintain a traffic-control device upon a highway under the jurisdiction of the department except by the latter's permission.

(3) Only the department may erect and maintain these traffic-control devices conforming to its manual and specifications on a controlled-access highway or controlled-access facility. The erection of a sign, marker, or emblem on a controlled-access facility or controlled-access highway by any other public authority, or agent, or by a private individual, firm, or corporation is unlawful and a misdemeanor and punishable as provided in 61-8-712.

(4) The erection or maintenance of a sign, marker, emblem, or traffic-control device on a state highway except a controlled-access highway or controlled-access facility, is subject to the rules and specifications the department adopts and publishes in the interest of public safety and convenience.

History: En. Sec. 31, Ch. 263, L. 1955; amd. Sec. 1, Ch. 224, L. 1959; amd. Sec. 53, Ch. 316, L. 1974; R.C.M. 1947, 32-2134(a) thru (d); amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

General powers of Department of Transportation, 60-2-201.

Maintenance agreements with local governments, 60-2-204.

Control of access, Title 60, ch. 5, part 1.

Erection of signs, 61-8-704.

Penalty for erection of unauthorized sign, 61-8-712.

61-8-204. Reward for information on injury to or removal of sign or marker. Upon conviction under the provisions of 61-8-713, a person who furnishes information to law enforcement officers leading to the arrest and conviction of the accused person must be paid a reward from the highway nonrestricted account in the state special revenue fund in the sum of $100.

History: En. Sec. 2, Ch. 184, L. 1965; R.C.M. 1947, 32-2134.2; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 57, Ch. 509, L. 1995.

Cross-References

Rewards for apprehension of criminals, 7-32-2301.

Fund structure, 17-2-102.

61-8-205. Posting of penalties along highways. The department of transportation shall post notices of 61-8-713, and the penalties provided for, at locations designated by the department.

History: En. Sec. 3, Ch. 184, L. 1965; amd. Sec. 54, Ch. 316, L. 1974; R.C.M. 1947, 32-2134.3; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

General powers of Department of Transportation, 60-2-201.

61-8-206. Local traffic-control devices. Local authorities in their respective jurisdictions shall place and maintain such traffic-control devices upon highways under their jurisdiction as they may deem necessary to indicate and to carry out the provisions of this chapter or local traffic ordinances or to regulate, warn, or guide traffic. All such traffic-control devices hereafter erected shall conform to the state manual and specifications.

History: En. Sec. 32, Ch. 263, L. 1955; R.C.M. 1947, 32-2135.

Cross-References

Municipal regulation of trafficways and public grounds, 7-14-4102.

Powers of local authorities to regulate traffic, 61-12-101.

61-8-207. Traffic-control signal legend. Whenever traffic is controlled by traffic-control signals exhibiting the words "Go", "Caution", or "Stop" or exhibiting different colored lights successively one at a time or with arrows, the following colors only must be used and the terms and lights must indicate and apply to drivers of vehicles and pedestrians as follows:

(1) green alone or "Go":

(a) Vehicular traffic facing the signal may proceed straight through or turn left or right unless a sign at the place prohibits either turn. But vehicular traffic, including vehicles turning right or left, must yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time the signal is exhibited.

(b) Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.

(2) yellow alone or "Caution" when shown following the green or "Go" signal:

(a) Vehicular traffic facing the signal is warned that the red or "Stop" signal will be exhibited immediately thereafter and vehicular traffic may not enter the intersection when the red or "Stop" signal is exhibited.

(b) Pedestrians facing the signals are advised that there is insufficient time to cross the roadway, and a pedestrian then starting to cross shall yield the right-of-way to all vehicles.

(3) red alone or "Stop":

(a) Vehicular traffic facing the signal must stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and must remain standing until green or "Go" is shown alone, until a right turn can safely be made, or until a left turn can safely be made from the far left lane if the turn is made from a one-way street onto another one-way street going left. In making the turn, vehicular traffic must yield the right-of-way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection. If a traffic sign legend indicating that no right turn on red or no left turn on red may be made after a stop is posted at the intersection, the movement cannot be made until green or "Go" is shown alone.

(b) A pedestrian facing a signal may not enter the roadway unless the pedestrian can do so safely and without interfering with any vehicular traffic.

(4) red with a green arrow:

(a) Vehicular traffic facing a signal may cautiously enter the intersection only to make the movement indicated by the arrow but must yield the right-of-way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection.

(b) A pedestrian facing a signal may not enter the roadway unless the pedestrian can do so safely and without interfering with vehicular traffic.

(5) traffic-control signal at a place other than an intersection:

(a) In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section are applicable except as to those provisions that by their very nature can have no application.

(b) Any stop required must be made at a sign or marking on the pavement indicating where the stop must be made, but in the absence of any sign or marking, the stop must be made at the signal.

History: En. Sec. 34, Ch. 263, L. 1955; amd. Sec. 1, Ch. 211, L. 1963; amd. Sec. 1, Ch. 206, L. 1974; R.C.M. 1947, 32-2137; amd. Sec. 1, Ch. 62, L. 1979; amd. Sec. 47, Ch. 16, L. 1991; amd. Sec. 1, Ch. 44, L. 1993.

Cross-References

Traffic-control signal defined, 61-1-402.

Stop, stopping, standing, and parking defined, 61-1-407.

Pedestrians subject to traffic regulations, 61-8-501.

61-8-208. Pedestrian control signals. Whenever special pedestrian control signals exhibiting the words "Walk" or "Wait" or "Don't Walk" are in place such signals shall indicate as follows:

(1) Walk. Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right-of-way by the drivers of all vehicles.

(2) Wait or Don't Walk. No pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his crossing on the walk signal shall proceed to a sidewalk or safety island while the wait signal is showing.

History: En. Sec. 35, Ch. 263, L. 1955; R.C.M. 1947, 32-2138.

Cross-References

Pedestrian defined, 61-1-308.

Safety zone defined, 61-1-405.

61-8-209. Flashing signals. (1) Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal it shall require obedience by vehicular traffic as follows:

(a) Flashing red (stop signal). When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked or, if none, then before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

(b) Flashing yellow (caution signal). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

(2) This section shall not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules as set forth in 61-8-347.

History: En. Sec. 36, Ch. 263, L. 1955; amd. Sec. 2, Ch. 169, L. 1957; R.C.M. 1947, 32-2139.

Cross-References

Railroad sign or signal defined, 61-1-404.

61-8-210. Display of unauthorized signs, signals, or markings. (1) No person shall place, maintain, or display upon or in view of any highway any unauthorized sign, signal, marking, or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign, or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal.

(2) No person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising.

(3) This section shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.

(4) The prohibition of this section shall not apply to portable "Caution" signs placed in the vicinity of schools at those times during which school children are going to and coming from school.

History: En. Sec. 37, Ch. 263, L. 1955; R.C.M. 1947, 32-2140(a) thru (d).

Cross-References

Highway encroachments, Title 60, ch. 6.

Removal of unauthorized sign, 61-8-706.

Penalty for erection of unauthorized sign, 61-8-712.

Part 3

Vehicle Operating Requirements

Part Cross-References

Vehicle Equipment Safety Compact, Title 61, ch. 2, part 2.

Revocation, suspension, or cancellation of licenses, Title 61, ch. 5, part 2.

Records and reports of convictions, Title 61, ch. 11.

61-8-301. Reckless driving. (1) A person commits the offense of reckless driving if he:

(a) operates any vehicle in willful or wanton disregard for the safety of persons or property;

(b) operates any vehicle in willful or wanton disregard for the safety of persons or property while fleeing or attempting to flee from or elude a peace officer who is lawfully in pursuit and whose vehicle is at the time in compliance with the requirements of 61-9-402; or

(c) operates any vehicle in willful or wanton disregard for the safety of persons or property while passing, in either direction, a school bus which has stopped and is displaying the visual flashing red signal as provided in 61-8-351 and 61-9-402. This subsection (1)(c) does not apply to situations described in 61-8-351(5).

(2) Each municipality in this state may enact and enforce 61-8-715 and subsection (1) of this section as an ordinance.

History: En. Sec. 40, Ch. 263, L. 1955; amd. Sec. 4, Ch. 201, L. 1957; amd. Sec. 1, Ch. 287, L. 1977; R.C.M. 1947, 32-2143(1), (4); amd. Sec. 1, Ch. 209, L. 1979; amd. Sec. 1, Ch. 221, L. 1985.

Cross-References

Regulation of motor vehicles, 7-14-4103.

Liability for negligence as well as willful acts, 27-1-701.

Resisting arrest, 45-7-301.

Offenses furnishing ground for suspension or revocation of license, 61-5-405.

Application — exceptions, 61-8-101.

Reckless driving — penalty, 61-8-715.

61-8-302. Careless driving. A person operating or driving a vehicle of any character on a public highway of this state shall drive it in a careful and prudent manner so as not to unduly or unreasonably endanger the life, limb, property, or other rights of a person entitled to the use of the street or highway.

History: En. 32-2143.3 by Sec. 1, Ch. 294, L. 1977; R.C.M. 1947, 32-2143.3.

Cross-References

Liability for negligence as well as willful acts, 27-1-701.

Disorderly conduct, 45-8-101.

Public highway defined, 61-1-202.

Careless driving — penalty, 61-8-716.

61-8-303. Speed restrictions. (1) Except as provided in 61-8-309, 61-8-310, 61-8-312, and subsection (2) of this section, the speed limit for vehicles traveling:

(a) on a federal-aid interstate highway outside an urbanized area of 50,000 population or more is 75 miles an hour at all times and the speed limit for vehicles traveling on federal-aid interstate highways within an urbanized area of 50,000 population or more is 65 miles an hour at all times;

(b) on any other public highway of this state is 70 miles an hour during the daytime and 65 miles an hour during the nighttime.

(2) The speed limit for vehicles traveling on U.S. highway 93 between the Canadian and Idaho borders is 65 miles an hour at all times. The speed limit imposed by this subsection ceases to be effective if U.S. highway 93 is upgraded to a continuous four-lane highway.

(3) A vehicle subject to the speed limits imposed in subsection (1) traveling on a two-lane road may exceed the speed limits imposed in subsection (1) by 10 miles an hour in order to overtake and pass a vehicle and return safely to the right-hand lane.

(4) Subject to the maximum speed limits set forth in subsections (1) and (2), a person shall operate a vehicle in a careful and prudent manner and at a reduced rate of speed no greater than is reasonable and prudent under the conditions existing at the point of operation, taking into account the amount and character of traffic, visibility, weather, and roadway conditions.

(5) When no special hazard exists that requires lower speed for compliance with subsections (1) and (2), the speed of a vehicle not in excess of the limits specified in this section or established as authorized in 61-8-309 through

61-8-311 and 61-8-313 is lawful, but a speed in excess of 25 miles an hour in an urban district is unlawful.

(6) "Daytime" means from one-half hour before sunrise to one-half hour after sunset. "Nighttime" means at any other hour.

(7) The speed limits set forth in this section may be altered by the transportation commission or a local authority as authorized in 61-8-309, 61-8-310, 61-8-313, and 61-8-314.

History: En. Sec. 41, Ch. 263, L. 1955; amd. Sec. 1, Ch. 190, L. 1967; amd. Sec. 55, Ch. 316, L. 1974; R.C.M. 1947, 32-2144; amd. Sec. 1, Ch. 173, L. 1989; amd. Sec. 6, Ch. 75, L. 1995; amd. Sec. 1, Ch. 78, L. 1995; amd. Sec. 2, Ch. 287, L. 1995; amd. Sec. 3, Ch. 473, L. 1997; amd. Sec. 2, Ch. 43, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 43 inserted (1) through (3) establishing speed limits; in (4) at beginning of first sentence inserted "Subject to the maximum speed limits set forth in subsections (1) and (2)", near middle before "rate" inserted "reduced", after "reasonable and" substituted "prudent" for "proper", at end substituted "visibility, weather, and roadway conditions" for "condition of brakes, weight of vehicle, grade and width of highway, condition of surface, and freedom of obstruction to the view ahead", and deleted former second sentence that read: "The person operating or driving the vehicle shall drive the vehicle so as not to unduly or unreasonably endanger the life, limb, property, or other rights of a person entitled to the use of the street or highway"; in (5) near beginning inserted reference to subsection (2), near end substituted "25 miles an hour in an urban district" for "the following limits", and deleted former subsections (2)(a) and (2)(b) that read: "(a) 25 miles per hour in an urban district; (b) 55 miles per hour in other locations during the nighttime, except that the nighttime speed limit on completed sections of interstate highways is 65 miles per hour"; deleted former (5) that read: "(5) The driver of a vehicle shall, consistent with subsection (1), drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon a narrow or winding roadway, and when a special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway condition"; and made minor changes in style. Amendment effective May 28, 1999.

Cross-References

Transportation Commission, 2-15-2502; Title 60, ch. 2, part 1.

Intersection defined, 61-1-212.

Urban district, 61-1-410.

Erection of signs, 61-8-704.

61-8-304. Repealed. Sec. 10, Ch. 43, L. 1999.

History: En. 32-2144.1 by Sec. 1, Ch. 60, L. 1974; R.C.M. 1947, 32-2144.1; amd. Sec. 66, Ch. 421, L. 1979; amd. Sec. 1, Ch. 681, L. 1983; amd. Sec. 1, Ch. 521, L. 1987.

61-8-305. Repealed. Sec. 10, Ch. 43, L. 1999.

History: En. 32-2144.2, 32-2144.3, 32-2144.4 by Secs. 2, 3, 4, Ch. 60, L. 1974; R.C.M. 1947, 32-2144.2, 32-2144.3, 32-2144.4; amd. Sec. 2, Ch. 681, L. 1983; amd. Sec. 1, Ch. 499, L. 1989.

61-8-306. Repealed. Sec. 10, Ch. 43, L. 1999.

History: En. 32-2144.5 by Sec. 5, Ch. 60, L. 1974; R.C.M. 1947, 32-2144.5.

61-8-307. Repealed. Sec. 10, Ch. 43, L. 1999.

History: En. 32-2144.7 by Sec. 7, Ch. 60, L. 1974; R.C.M. 1947, 32-2144.7.

61-8-308. Permission of authorities to hold speed contest. No race or contest for speed shall be held and no person shall engage in or aid or abet in any motor vehicle speed contest or exhibition of speed on a public highway or street without written permission of the authorities of the state, county, or city having jurisdiction and unless the same is fully and efficiently patrolled for the entire distance over which such race or contest for speed is to be held.

History: En. Sec. 1, Ch. 100, L. 1967; R.C.M. 1947, 32-2143.1.

Cross-References

Penalty for unauthorized drag racing, 61-8-717.

61-8-309. Establishment of special speed zones. (1) (a) If the commission determines upon the basis of an engineering and traffic investigation that a speed limit set by 61-8-303 is greater or less than is reasonable or safe under the conditions found to exist at an intersection, curve, or dangerous location or on a segment of a highway less than 50 miles in length under its jurisdiction, the commission may set a reasonable and safe special speed limit at that location.

(b) If a local authority requests the department of transportation or an engineer, as provided in subsection (1)(c)(i), to conduct an engineering and traffic investigation based on the belief that a speed limit on a highway under the department's jurisdiction is greater than is reasonable or safe, the commission may not increase the speed limit under consideration as a result of the investigation.

(c) (i) A local authority may request at its own expense that an engineering and traffic investigation be completed by a licensed professional engineer selected from a list compiled and approved by a committee as provided in subsection (1)(c)(ii).

(ii) A committee containing two department of transportation staff appointed by the director and two representatives of associations whose membership comprises cities, towns, and counties, as authorized by 7-5-2141 and 7-5-4141, shall review credentials submitted by licensed professional engineers and shall determine who appears on the list of individuals authorized to conduct engineering and traffic investigations for local governments. The list must be updated every 2 years.

(iii) Upon completion of an engineering and traffic investigation conducted for a local government, the department of transportation shall submit a report to the commission with findings and recommendations. The commission shall decide on an appropriate speed limit based on the traffic investigation within 120 days from the date the investigation is submitted to the department.

(2) The department of transportation shall erect and maintain appropriate signs giving notice of these special limits. When they are erected, the limits are effective at that part at all times or at other times that the commission sets.

(3) The authority of the commission under this section includes the authority to set reduced nighttime speed limits on curves and other dangerous locations.

(4) This section does not authorize the commission to set a statewide speed limit.

History: En. Sec. 42, Ch. 263, L. 1955; amd. Sec. 1, Ch. 204, L. 1959; amd. Sec. 1, Ch. 178, L. 1961; amd. Sec. 56, Ch. 316, L. 1974; R.C.M. 1947, 32-2145; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 1, Ch. 73, L. 1995; amd. Sec. 1, Ch. 206, L. 1997; amd. Sec. 4, Ch. 43, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 43 in (1)(a) near middle after "dangerous location" substituted "or on a segment of a highway less than 50 miles in length" for "or any other part of a highway"; in (1)(c)(ii) in second sentence after "list" deleted "must be completed by October 1, 1997, and"; and made minor changes in style. Amendment effective May 28, 1999.

Cross-References

Transportation Commission, Title 60, ch. 2, part 1.

General powers of Department of Transportation, 60-2-201.

Erection of signs, 61-8-704.

61-8-310. When local authorities may and shall alter limits. (1) If a local authority in its jurisdiction determines on the basis of an engineering and traffic investigation that the speed permitted under 61-8-303 and 61-8-309 through 61-8-313 is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may set a reasonable and safe limit that:

(a) decreases the limit at an intersection;

(b) increases the limit within an urban district, but not to more than 65 miles an hour during the nighttime;

(c) decreases the limit outside an urban district, but not to less than 35 miles an hour; or

(d) decreases the limit in an area near a school, a senior citizen center, as defined in 23-5-112, or a designated crosswalk, as crosswalk is defined in 61-1-209, that is close to a school or a senior citizen center to not less than 80%, rounded down to the nearest whole number evenly divisible by 5, of the limit that would be set on the basis of an engineering and traffic investigation, but not less than 15 miles an hour. If warranted by an engineering and traffic investigation, a local authority may adopt variable speed limits to adapt to traffic conditions by time of day, provided that the variable limits comply with the provisions of 61-8-206.

(2) A board of county commissioners may set limits, as provided in subsection (1)(c), without an engineering and traffic investigation on a county road, as defined in 60-1-103.

(3) A local authority in its jurisdiction may determine the proper speed for all arterial streets and shall set a reasonable and safe limit on arterial streets that may be greater or less than the speed permitted under 61-8-303 for an urban district.

(4) An altered limit established as authorized under this section is effective at all times or at other times determined by the authority when appropriate signs giving notice of the altered limit are erected upon the highway.

(5) Except as provided in subsection (1)(d), the commission has exclusive jurisdiction to set special speed limits on all federal-aid highways or extensions of federal-aid highways in all municipalities or urban areas. The commission shall set these limits in accordance with 61-8-309.

History: En. Sec. 43, Ch. 263, L. 1955; amd. Sec. 1, Ch. 89, L. 1971; amd. Sec. 57, Ch. 316, L. 1974; R.C.M. 1947, 32-2146; amd. Sec. 2, Ch. 614, L. 1985; amd. Sec. 1, Ch. 686, L. 1991; amd. Sec. 1, Ch. 213, L. 1993; amd. Sec. 3, Ch. 287, L. 1995; amd. Sec. 5, Ch. 43, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 43 in (1)(b) increased possible nighttime limit from 55 to 65 miles an hour; and in (1)(c) increased possible limit outside an urban district from not less than 15 to not less than 35 miles an hour. Amendment effective May 28, 1999.

Cross-References

General powers relating to county roads, 7-14-2102.

County authority to establish speed limits, 7-14-2113.

Regulation of trafficways and public grounds, 7-14-4102.

Regulation of motor vehicles, 7-14-4103.

Erection of signs, 61-8-704.

61-8-311. Minimum speed regulations. (1) A person may not drive a motor vehicle at a speed slow enough to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

(2) On a two-lane highway where passing is unsafe because of traffic in the opposite direction or other conditions, a slow-moving vehicle, including a passenger vehicle, behind which four or more vehicles are formed in line shall turn off the roadway at the nearest place designated as a turnout by signs erected by the authority having jurisdiction over the highway or wherever sufficient area for a safe turnout exists in order to permit the vehicles following it to proceed. If the shoulder of the highway to the right of the overtaken vehicle is wide enough and is in a condition allowing safe travel, the driver of the overtaken vehicle may drive onto the shoulder and proceed at a safe speed until passed. As used in this section a slow-moving vehicle is one which is proceeding at a rate of speed less than the normal flow of traffic at the particular time and place. The department of transportation is authorized to designate and construct such turnouts and to erect signs at appropriate places advising motorists of this statute.

(3) If the department of transportation or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, the commission or the local authority may set a minimum speed limit below which a person may not drive a vehicle except when necessary for safe operation or in compliance with law.

History: En. Sec. 44, Ch. 263, L. 1955; amd. Sec. 1, Ch. 387, L. 1973; amd. Sec. 58, Ch. 316, L. 1974; R.C.M. 1947, 32-2147; amd. Sec. 1, Ch. 15, L. 1983; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Municipal regulation of trafficways and public grounds, 7-14-4102.

General powers of Department of Transportation, 60-2-201.

Slow-moving vehicles, 61-9-415.

61-8-312. Special speed limitations on trucks, truck tractors, and motor-driven cycles. (1) Except as provided in 61-8-303, 61-8-309, 61-8-310, and subsection (2) of this section, the speed limit for a truck or truck tractor of more than 1 ton "manufacturer's rated capacity" traveling on:

(a) completed sections of interstate is 65 miles an hour; and

(b) four-lane divided highways and completed sections of primary and secondary highways is 60 miles an hour during the daytime and 55 miles an hour during the nighttime as those terms are defined in 61-8-303.

(2) Except as provided in 61-8-303, 61-8-309, and 61-8-310, the speed limit for a vehicle subject to a term permit under 61-10-124(2)(d) or a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles subject to special permits under 61-10-124(4) is 55 miles an hour unless otherwise stated in the permit.

(3) A person may not operate a motor-driven cycle at any time mentioned in 61-9-201 at a speed greater than 35 miles an hour unless the motor-driven cycle is equipped with a headlamp or lamps that are adequate to reveal a person or vehicle at a distance of 300 feet ahead.

History: En. Sec. 45, Ch. 263, L. 1955; amd. Sec. 1, Ch. 241, L. 1957; amd. Sec. 1, Ch. 119, L. 1961; amd. Sec. 1, Ch. 253, L. 1971; R.C.M. 1947, 32-2148; amd. Sec. 1, Ch. 474, L.

1987; amd. Sec. 1, Ch. 437, L. 1989; amd. Sec. 48, Ch. 16, L. 1991; amd. Sec. 1, Ch. 232, L. 1997; amd. Sec. 6, Ch. 43, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 43 substituted (1) establishing speed limits for a truck or tractor of more than 1 ton for former text that read: "A person may not operate a truck or truck tractor, the gross weight of which exceeds 8,000 pounds, at a speed greater than 65 miles an hour on those completed sections of interstate and four-lane divided highways and 60 miles an hour on those completed sections of primary and secondary highways. However, the truck nighttime speed limit may not exceed that of automobiles, as stated in 61-8-303"; in (2) at beginning substituted "Except as provided in 61-8-303, 61-8-309, and 61-8-310, the speed limit for" for "A person may not operate" and at end inserted "unless otherwise stated in the permit"; deleted former (4) that read: "(4) A person may not operate a vehicle that is towing a housetrailer at a speed greater than a maximum of 50 miles an hour"; and made minor changes in style. Amendment effective May 28, 1999.

Cross-References

Motor-driven cycle defined, 61-1-106.

Truck defined, 61-1-107.

Truck tractor defined, 61-1-108.

Housetrailer defined, 61-1-501.

Gross weight defined, 61-1-502.

Lamps on other vehicles and equipment, 61-9-216.

61-8-313. Special speed limitations. (1) A person may not drive a vehicle equipped with solid rubber or cushion tires at a speed greater than 10 miles per hour.

(2) A person may not drive a vehicle over a bridge or other elevated structure constituting a part of a highway at a speed which is greater than the maximum speed which can be maintained with safety to the bridge or structure when the structure is signposted as provided in this section.

(3) The department of transportation upon request from a local authority may, or upon its own initiative shall, conduct an investigation of a bridge or other elevated structure constituting a part of a highway, and if it finds on investigation that the structure cannot safely withstand vehicles traveling at the speed otherwise permissible under this chapter, the commission shall set the maximum speed of vehicles which the structure can withstand, and the department shall erect and maintain suitable signs stating the maximum speed at a distance of not less than 100 feet before each end of the structure.

(4) Upon the trial of a person charged with a violation of this section, proof of the setting of the maximum speed by the commission and the existence of the signs is conclusive evidence of the maximum speed which can be maintained with safety to the bridge or structure.

History: En. Sec. 46, Ch. 263, L. 1955; amd. Sec. 59, Ch. 316, L. 1974; R.C.M. 1947, 32-2149; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Maintenance and control of bridges, 7-14-2201.

Evidence — complete list of conclusive presumptions, 26-1-601.

General powers of Department of Transportation, 60-2-201.

Solid tire defined, 61-1-126.

Department of Transportation to sign all state highways, 61-8-203.

Erection of signs, 61-8-704.

61-8-314. Traffic violations in construction zone and work zone — definitions. (1) As used in this section, the following definitions apply:

(a) "Construction zone" means an area on a public highway or on the adjacent right-of-way where construction, repair, maintenance, or survey work is being performed by the department of transportation, a local authority, a utility company, or a private contractor under contract with the department of transportation or a local authority. A construction zone may include a work zone.

(b) "Public highway" has the same meaning as in 60-1-103.

(c) "Work zone" means the area where the construction, repair, maintenance, or survey work is actually taking place. The boundaries of the work zone must be clearly identified by the posting of signs.

(2) A person may not operate a motor vehicle in a construction zone or in a work zone on a public highway in violation of any of the provisions of part 3 of this chapter.

(3) The speed limit in a construction zone or in a work zone must be set by the department of transportation or the local authority based on traffic conditions or the condition of the construction, repair, maintenance, or survey project.

(4) (a) If the department of transportation, the local authority, the utility company, or the private contractor determines, based on traffic conditions or the condition of the construction, repair, maintenance, or survey project, that special speed limits in work zones or construction zones are warranted, then the department, the local authority, the utility company, or the private contractor shall post signs that:

(i) conform to the department of transportation's manual on uniform traffic control devices;

(ii) indicate the boundaries of the construction zone and the work zone; and

(iii) display the speed limit in effect within both zones.

(b) The department of transportation, the local authority, the utility company, or the private contractor shall clearly indicate at the boundary of a construction zone that a person who violates any of the provisions of part 3 of this chapter in the work zone is subject to the fine provided in subsection (5)(a).

(c) The boundaries of the work zone may not exceed 500 feet in advance of and beyond the actual construction activity.

(d) The department of transportation, the local authority, the utility company, or the private contractor shall remove or cover the signs when no work is in progress and no hazard exists.

(5) (a) A person convicted of a traffic violation in a work zone is guilty of a misdemeanor. Upon arrest and conviction, the person shall be punished by a fine of not less than double the penalty provided for the violation in part 7 of this chapter.

(b) A person convicted of a traffic violation in a construction zone is guilty of a misdemeanor. Upon arrest and conviction, the person is subject to the penalty provided for the violation in part 7 of this chapter.

History: En. Sec. 1, Ch. 473, L. 1997; amd. Sec. 1, Ch. 430, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 430 in definition of work zone inserted second sentence concerning posting signs; in (4)(a) at end inserted "determines, based on traffic conditions or the condition of the construction, repair, maintenance, or survey project, that special speed limits in work zones or construction zones are warranted, then the department, the local authority, the utility company, or the private contractor"; inserted (4)(d) concerning removing or covering signs; and made minor changes in style. Amendment effective October 1, 1999.

61-8-315. Reckless endangerment of highway workers — definition. (1) As used in this section, "highway worker" means an employee of the department of transportation, a local authority, a utility company, or a private contractor.

(2) A person commits the offense of reckless endangerment of highway workers if the person purposely, knowingly, or negligently drives a motor vehicle in a highway construction zone in such a manner as to endanger persons or property or if the person purposely removes, ignores, or intentionally strikes a traffic control device in a highway construction zone for reasons other than:

(a) avoidance of an obstacle;

(b) an emergency; or

(c) to protect the health or safety of an occupant of the vehicle or another person.

History: En. Sec. 2, Ch. 473, L. 1997.

61-8-316 through 61-8-320 reserved.

61-8-321. Drive on right side of roadway — exceptions. (1) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

(a) when overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(b) when the right half of a roadway is closed to traffic while under construction or repair;

(c) upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or

(d) upon a roadway designated and signposted for one-way traffic.

(2) Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

History: En. Sec. 48, Ch. 263, L. 1955; R.C.M. 1947, 32-2151.

Cross-References

Laned roadway defined, 61-1-207.

61-8-322. Passing vehicles proceeding in opposite directions. Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one line of traffic in each direction, each driver shall give to the other at least one-half of the main-traveled portion of the roadway.

History: En. Sec. 49, Ch. 263, L. 1955; R.C.M. 1947, 32-2152; amd. Sec. 67, Ch. 421, L. 1979.

61-8-323. Overtaking vehicle on left. The following rules govern the overtaking and passing of vehicles proceeding in the same direction, subject to the limitations, exceptions, and special rules provided in this part:

(1) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left of the other vehicle at a safe distance and may not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(2) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle upon an audible signal or the use of signal lamps, as provided in 61-9-218, and may not increase the speed of the vehicle until completely passed by the overtaking vehicle. When giving way to the right on a two-lane highway, the driver of the vehicle being overtaken may travel upon the shoulder at a safe speed until passed if the shoulder is wide enough and is in a condition allowing safe travel.

History: **En. Sec. 50, Ch. 263, L. 1955; R.C.M. 1947, 32-2153; amd. Sec. 2, Ch. 15, L. 1983; amd. Sec. 1, Ch. 119, L. 1997.**

61-8-324. When overtaking on right is permitted. (1) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

(a) when the vehicle overtaken is making or about to make a left turn;

(b) upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two or more lines of moving vehicles in each direction;

(c) upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two or more lines of moving vehicles.

(2) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main-traveled portion of the roadway.

History: **En. Sec. 51, Ch. 263, L. 1955; R.C.M. 1947, 32-2154.**

61-8-325. Limitations on overtaking on the left. (1) No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to the right-hand side of the roadway before coming within 100 feet of any vehicle approaching from the opposite direction.

(2) No vehicle shall at any time be driven to the left side of the roadway under the following conditions:

(a) when approaching the crest of a grade or upon a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;

(b) when approaching within 100 feet of or traversing any intersection or railroad grade crossing;

(c) when the view is obstructed upon approaching within 100 feet of any bridge, viaduct, or tunnel.

(3) The foregoing limitations shall not apply upon a one-way roadway.

History: **En. Secs. 52, 53, Ch. 263, L. 1955; R.C.M. 1947, 32-2155, 32-2156.**

Cross-References

Slow-moving vehicles, 61-9-415.

61-8-326. No-passing zones. (1) The department of transportation may determine those portions of a highway where overtaking and passing or driving to the left of the roadway would be especially hazardous, and it may by appropriate signs or markings on the roadway indicate the beginning and end of these zones. When the signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey the directions of those signs.

(2) Where signs or markings are in place to define a no-passing zone as set forth in subsection (1) a driver may not drive on the left side of the roadway within the no-passing zone or on the left side of a pavement striping designed to mark the no-passing zone throughout its length.

History: En. Sec. 54, Ch. 263, L. 1955; amd. Sec. 1, Ch. 97, L. 1957; amd. Sec. 60, Ch. 316, L. 1974; R.C.M. 1947, 32-2157; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

General powers of Department of Transportation, 60-2-201.

Laned roadway defined, 61-1-207.

Obedience to traffic-control devices, 61-8-201.

Department of Transportation to sign all state highways, 61-8-203.

61-8-327. One-way roadways and rotary traffic islands. (1) The department of transportation may designate a highway or a separate roadway under its jurisdiction for one-way traffic and shall erect appropriate signs giving notice of that designation.

(2) Upon a roadway designated and signposted for one-way traffic a vehicle may be driven only in the direction designated.

(3) A vehicle passing around a rotary traffic island may be driven only to the right of such island.

History: En. Sec. 55, Ch. 263, L. 1955; amd. Sec. 61, Ch. 316, L. 1974; R.C.M. 1947, 32-2158; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

General powers of Department of Transportation, 60-2-201.

Obedience to traffic-control devices, 61-8-201.

61-8-328. Driving on roadways laned for traffic. Whenever a roadway has been divided into two or more clearly marked lanes for traffic, the following rules, in addition to all other consistent rules, apply:

(1) A vehicle must be driven as nearly as practicable entirely within a single lane and may not be moved from the lane until the driver has first ascertained that the movement can be made with safety.

(2) Upon a roadway that is divided into three lanes, a vehicle may not be driven in the center lane except:

(a) when overtaking and passing another vehicle where the roadway is clearly visible and the center lane is clear of traffic within a safe distance;

(b) in preparation for a left turn; or

(c) when the center lane is at the time allocated exclusively to traffic moving in the direction that the vehicle is proceeding and is signposted to give notice of the allocation.

(3) Official signs may be erected directing slow-moving traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway. Drivers of vehicles

shall obey the directions of every official sign that designates use of specific lanes.

(4) A person may turn a vehicle left across a lane marked with two yellow lines into a public or private parking lot or a roadway if the turn can be made safely and if the person does not hinder the flow of oncoming traffic.

History: En. Sec. 56, Ch. 263, L. 1955; R.C.M. 1947, 32-2159; amd. Sec. 2, Ch. 119, L. 1997.

Cross-References

Laned roadway defined, 61-1-207.

Obedience to traffic-control devices, 61-8-201.

Slow-moving vehicles, 61-9-415.

61-8-329. Following too closely. (1) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

(2) The driver of any truck tractor, truck, or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residence district and which is following another truck tractor, truck, or motor vehicle drawing another vehicle shall, whenever conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this shall not prevent a truck tractor, truck, or motor vehicle drawing another vehicle from overtaking and passing any like vehicle or other vehicle.

(3) Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade whether or not towing other vehicles shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This provision shall not apply to funeral processions.

History: En. Sec. 57, Ch. 263, L. 1955; R.C.M. 1947, 32-2160.

Cross-References

Liability for negligence as well as willful acts, 27-1-701.

Business district defined, 61-1-408.

Residence district defined, 61-1-409.

Use of multiple-beam road-lighting equipment, 61-9-221.

61-8-330. Driving on divided highways. Whenever any highway has been divided into two roadways by leaving an intervening space or by physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway and no vehicle shall be driven over, across, or within any such dividing space, barrier, or section except through an opening in such physical barrier or dividing section or space or at a crossover or intersection established by public authority.

History: En. Sec. 58, Ch. 263, L. 1955; R.C.M. 1947, 32-2161.

61-8-331. Restricted and controlled access. (1) No person shall drive a vehicle onto or from any controlled-access roadway except at such entrances and exits as are established by public authority.

(2) On any controlled-access highway or facility it is unlawful for any person to:

(a) drive a vehicle over, upon, or across any curb, central dividing section, or other separation or dividing line;

(b) make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb, section, separation, or line;

(c) drive any vehicle except in the proper lane, in the proper direction, and to the right of the central dividing curb, separation, section, or line;

(d) drive any vehicle from a local service road except through an opening provided for that purpose in the dividing curb, section, or line which separates the service road from the highway or facility;

(e) construct, operate, or maintain any road or private driveway connecting with the highway or facility without first obtaining permission in writing from the highway authority having jurisdiction and, with the exception of an interstate highway, from the local governing body.

History: (1)En. Sec. 59, Ch. 263, L. 1955; Sec. 32-2162, R.C.M. 1947; (2)En. Sec. 10-111, Ch. 197, L. 1965; Sec. 32-4311, R.C.M. 1947; R.C.M. 1947, 32-2162, 32-4311(1).

Cross-References

Private road or driveway defined, 61-1-205.

Controlled-access highway defined, 61-1-211.

Penalty for violation, 61-8-720.

61-8-332. Restrictions on use of controlled-access roadway. (1) The department of transportation may by rule and local authorities may by ordinance prohibit the use of a controlled-access highway under their respective jurisdictions by pedestrians, bicycles, or other nonmotorized traffic or by a person operating a motor-driven cycle.

(2) The department or the local authority which adopts the prohibitory regulation shall erect and maintain official signs on the controlled-access roadway on which these regulations are applicable. It is unlawful for a person to violate the restrictions stated on those signs.

History: En. Sec. 60, Ch. 263, L. 1955; amd. Sec. 62, Ch. 316, L. 1974; R.C.M. 1947, 32-2163; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Municipal ordinances, 7-5-4201.

General powers of Department of Transportation, 60-2-201.

Motor-driven cycle defined, 61-1-106.

Bicycle defined, 61-1-123.

Controlled-access highway defined, 61-1-211.

Pedestrian defined, 61-1-308.

Obedience to traffic-control devices, 61-8-201.

61-8-333. Required position and method of turning at intersections — bicycle turn procedures — signs. (1) The driver of a vehicle intending to turn at an intersection shall do so as follows:

(a) Right turns. Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(b) Left turn on two-way roadways. At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

(c) Left turns on other than two-way roadways. At any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered.

(d) A person making a turn under subsections (1)(a), (1)(b), or (1)(c) is entitled to the full use of the lane from which the turn may be legally made.

(2) (a) A person operating a bicycle who intends to turn left shall follow the course described in subsection (1) or in subsection (2)(b).

(b) A person operating a bicycle who intends to turn left shall approach the turn as close as practicable to the right curb or edge of the roadway. After proceeding across the intersecting roadway, the person shall make the turn as close as practicable to the curb or edge of the roadway on the far right side of the intersection. After turning, the person shall yield to through traffic and shall comply with any official traffic-control device or police officer regulating traffic on the highway along which he intends to proceed.

(3) Local authorities in their respective jurisdictions may cause markers, buttons, or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection, and when markers, buttons, or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons, or signs.

History: En. Sec. 61, Ch. 263, L. 1955; R.C.M. 1947, 32-2164; amd. Sec. 3, Ch. 450, L. 1983.

Cross-References

Municipal regulation of trafficways and public grounds, 7-14-4102.

Bicycle defined, 61-1-123.

Intersection defined, 61-1-212.

Traffic laws applicable to persons operating bicycles, 61-8-602.

Signal lamps and signal devices, 61-9-218.

61-8-334. Turning on curve or crest of grade prohibited. No vehicle shall be turned so as to proceed in the opposite direction upon any curve or upon the approach to or near the crest of a grade where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within 500 feet.

History: En. Sec. 62, Ch. 263, L. 1955; R.C.M. 1947, 32-2165.

61-8-335. Starting parked vehicle. No person shall start a vehicle which is stopped, standing, or parked unless and until such movement can be made with reasonable safety.

History: En. Sec. 63, Ch. 263, L. 1955; R.C.M. 1947, 32-2166.

Cross-References

Stop, stopping, standing, and parking defined, 61-1-407.

61-8-336. Turning movements and required signals. (1) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required by 61-8-333 or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by such movement.

(2) A signal of intention to turn right or left, other than when passing, when required shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning in any business, residence, or urban district as defined in 61-1-408 through 61-1-410.

(3) A signal of intention to turn right or left, other than when passing, when required shall be given continuously during not less than the last 300 feet traveled by the vehicle before turning in areas other than those set forth in subsection (2).

(4) A signal by hand and arm need not be given continuously by the person operating a bicycle if the hand is needed in the control or operation of the bicycle.

(5) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

History: En. Sec. 64, Ch. 263, L. 1955; R.C.M. 1947, 32-2167; amd. Sec. 1, Ch. 14, L. 1981; amd. Sec. 4, Ch. 450, L. 1983.

Cross-References

Bicycle defined, 61-1-123.

Traffic laws applicable to persons operating bicycles, 61-8-602.

61-8-337. Signals by hand and arm or signal device. (1) Any stop or turn signal when required herein shall be given either by means of the hand and arm or by a signal lamp or lamps, except as otherwise provided in subsection (2).

(2) Any motor vehicle in use on a highway shall be equipped with and required signal shall be given by a signal lamp or lamps when the distance from the center of the top of the steering post to the left outside limit of the body, cab, or load of such motor vehicle exceeds 24 inches or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds 14 feet. The latter measurement shall apply to any single vehicle, also to any combination of vehicles.

History: En. Sec. 65, Ch. 263, L. 1955; amd. Sec. 1, Ch. 105, L. 1957; R.C.M. 1947, 32-2168.

Cross-References

Signal lamps and signal devices, 61-9-218.

61-8-338. Method of giving hand-and-arm signals. (1) Except as provided in subsection (2), all signals herein required given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:

(a) Left turn. Hand and arm extended horizontally.

(b) Right turn. Hand and arm extended upward.

(c) Stop or decrease speed. Hand and arm extended downward.

(2) The person operating a bicycle may signal a right turn by extending the right hand and arm horizontally.

History: En. Sec. 66, Ch. 263, L. 1955; R.C.M. 1947, 32-2169; amd. Sec. 5, Ch. 450, L. 1983.

Cross-References

Traffic laws applicable to persons operating bicycles, 61-8-602.

61-8-339. Vehicle approaching or entering intersection. (1) When two or more vehicles enter or approach an intersection from different highways, the driver of the vehicle on the left shall yield the right-of-way to all vehicles approaching from the right that are close enough to constitute an immediate hazard.

(2) The right-of-way rule declared in subsection (1) is modified at through highways and otherwise as stated in this chapter.

History: En. Sec. 67, Ch. 263, L. 1955; amd. Sec. 1, Ch. 175, L. 1965; R.C.M. 1947, 32-2170; amd. Sec. 68, Ch. 421, L. 1979; amd. Sec. 1, Ch. 106, L. 1997.

Cross-References

Through highway defined, 61-1-210.

Intersection defined, 61-1-212.

Right-of-way defined, 61-1-406.

61-8-340. Vehicle turning left at intersection. The driver of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard, but said driver, having so yielded and having given a signal when and as required by this chapter, may make such left turn and the drivers of all other vehicles approaching the intersection from said opposite direction shall yield the right-of-way to the vehicle making the left turn. The provisions of this section shall not be applicable where it is otherwise directed by appropriate signs or signals.

History: En. Sec. 68, Ch. 263, L. 1955; R.C.M. 1947, 32-2171.

Cross-References

Intersection defined, 61-1-212.

Right-of-way defined, 61-1-406.

61-8-341. Vehicle entering through highway or stop intersection. (1) The driver of a vehicle shall stop as required by 61-8-344 at the entrance to a through highway and shall yield the right-of-way to other vehicles which have entered the intersection from said through highway or which are approaching so closely on said through highway as to constitute an immediate hazard, but said driver having so yielded may proceed and the drivers of all other vehicles approaching the intersection on said through highway shall yield the right-of-way to the vehicle so proceeding into or across the through highway.

(2) The driver of a vehicle shall likewise stop in obedience to a stop sign as required herein at an intersection where a stop sign is erected at one or more entrances thereto although not a part of a through highway and shall proceed cautiously, yielding to vehicles not so obliged to stop which are within the intersection or approaching so closely as to constitute an immediate hazard, but may then proceed.

History: En. Sec. 69, Ch. 263, L. 1955; amd. Sec. 3, Ch. 169, L. 1957; R.C.M. 1947, 32-2172.

Cross-References

Through highway defined, 61-1-210.

Intersection defined, 61-1-212.

61-8-342. Vehicles approaching "Yield" sign. When the intersection is designated by the department of transportation, or the local authority having jurisdiction, as a "Yield" intersection, the driver of a vehicle approaching the

"Yield" sign shall slow to a speed of not more than 15 miles per hour and yield right-of-way to all vehicles approaching from the right or left on the intersecting roads or streets which are so close as to constitute an immediate hazard. If a driver is involved in a collision at an intersection or interferes with the movement of other vehicles after driving past a "Yield" sign, such collision or interference shall be deemed evidence of the driver's failure to yield right-of-way.

History: En. Sec. 71, Ch. 263, L. 1955; amd. Sec. 1, Ch. 96, L. 1963; amd. Sec. 63, Ch. 316, L. 1974; R.C.M. 1947, 32-2174; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Right-of-way defined, 61-1-406.

Obedience to traffic-control devices, 61-8-201.

61-8-343. Vehicle entering highway from private road, driveway, or public approach ramp. The driver of a vehicle about to enter or cross a highway from a private road, driveway, or public approach ramp shall yield the right-of-way to all vehicles approaching on said highway.

History: En. Sec. 70, Ch. 263, L. 1955; amd. Sec. 1, Ch. 52, L. 1965; R.C.M. 1947, 32-2173.

Cross-References

Private road or driveway defined, 61-1-205.

61-8-344. Vehicles to stop at stop signs. (1) The department of transportation with reference to state highways and local authorities with reference to other highways under their jurisdiction may designate through highways and erect stop signs at specified entrances to these highways or may designate an intersection as a stop intersection and erect similar signs at one or more entrances to that intersection.

(2) The sign shall bear the word "Stop" in letters not less than 8 inches in height, and it shall be made luminous at nighttime by steady or flashing internal illumination or by a fixed floodlight projected on the face of the sign or by efficient reflecting elements on the face of the sign.

(3) The stop sign shall be erected as near as practicable to the nearest line of the crosswalk on the near side of the intersection or, if there is no crosswalk, then as close as practicable to the nearest line of the roadway.

(4) A driver of a vehicle approaching a stop sign shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, he shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection except when directed to proceed by a police officer or highway patrol officer or traffic-control signal.

History: En. Sec. 92, Ch. 263, L. 1955; amd. Sec. 65, Ch. 316, L. 1974; R.C.M. 1947, 32-2195; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Crosswalk defined, 61-1-209.

Through highway defined, 61-1-210.

Traffic-control signal defined, 61-1-402.

Obedience to police officers and highway patrol officers, 61-8-105.

Obedience to traffic-control devices, 61-8-201.

Department of Transportation to sign all state highways, 61-8-203.

61-8-345. Stop before emerging from alley, driveway, or building. The driver of a vehicle within a business or residence district emerging from an alley, driveway, or building shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway or driveway and shall yield the right-of-way to any pedestrian as may be necessary to avoid collision, and upon entering the roadway shall yield the right-of-way to all vehicles approaching on said roadway.

History: En. Sec. 93, Ch. 263, L. 1955; R.C.M. 1947, 32-2196.

Cross-References

Pedestrian defined, 61-1-308.

Right-of-way defined, 61-1-406.

Business district defined, 61-1-408.

Residence district defined, 61-1-409.

61-8-346. Operation of vehicles on approach of police vehicles or authorized emergency vehicles. (1) Upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of 61-9-402 or of a police vehicle properly and lawfully making use of an audible signal only, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the police vehicle or authorized emergency vehicle has passed, except when otherwise directed by a police officer or highway patrol officer.

(2) This section shall not operate to relieve the driver of a police vehicle or authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

History: En. Sec. 72, Ch. 263, L. 1955; amd. Sec. 4, Ch. 169, L. 1957; amd. Sec. 3, Ch. 153, L. 1975; R.C.M. 1947, 32-2175; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Police vehicle defined, 61-1-118.

Authorized emergency vehicles defined, 61-1-119.

Right-of-way defined, 61-1-406.

Obedience to police officers and highway patrol officers, 61-8-105.

61-8-347. Obedience to signal indicating approach of train. (1) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of such vehicle shall stop within 50 feet but not less than 15 feet from the nearest rail of such railroad, and shall not proceed until he can do so safely. The foregoing requirements shall apply when:

(a) a clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;

(b) a crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train;

(c) a railroad train approaching within approximately 1,500 feet of the highway crossing emits a signal audible from such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard;

(d) an approaching railroad train is plainly visible and is in hazardous proximity to such crossing.

(2) No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed.

History: En. Sec. 88, Ch. 263, L. 1955; R.C.M. 1947, 32-2191.

Cross-References

Railroad sign or signal defined, 61-1-404.

Flag person defined, 61-1-411.

Flashing signals, 61-8-209.

Railroad highway crossings, Title 69, ch. 14, part 6.

61-8-348. All vehicles to stop at certain railroad grade crossings. The department of transportation and local authorities may designate particularly dangerous highway grade crossings of railroads and erect stop signs at these crossings. When these stop signs are erected, the driver of a vehicle shall stop within 50 feet but not less than 15 feet from the nearest rail of the railroad and shall proceed only upon exercising due care.

History: En. Sec. 89, Ch. 263, L. 1955; amd. Sec. 64, Ch. 316, L. 1974; R.C.M. 1947, 32-2192; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Railroad sign or signal defined, 61-1-404.

Operation of trains at grade crossings, 69-14-239.

Railroad highway crossings, Title 69, ch. 14, part 6.

61-8-349. Certain vehicles to stop at all railroad grade crossings. (1) A person driving a motor vehicle upon a public highway of this state outside of corporate limits of incorporated cities or towns where the view is obscure or when a moving train is within sight or hearing shall bring the vehicle to a full stop not less than 10 or more than 100 feet from the intersection of the highway and the railroad tracks, before crossing the railroad tracks, at all crossings where a flagman or a mechanical device is not maintained to warn the traveling public of approaching trains or cars.

(2) (a) Except as provided in subsection (2)(b), the driver of a motor vehicle carrying seven or more passengers for hire, a school bus with or without passengers, or a vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop the vehicle within 50 feet but not less than 15 feet from the nearest rail of the railroad and while stopped shall open the door (in the case of a school bus) and shall listen and look in both directions along the track for an approaching train and for signals indicating the approach of a train and may not proceed until he can do so safely. After stopping as required in this section and upon proceeding when it is safe to do so, the driver of a vehicle shall cross only in a gear of the vehicle that requires no changing gears while traversing the crossing. The driver may not shift gears while crossing the track or tracks.

(b) A stop is not required at a crossing where a police officer, highway patrol officer, or traffic-control signal directs traffic to proceed.

(3) As used in this section, "traffic-control signal" does not include a railroad grade crossing signal.

History: (1)En. Sec. 1, Ch. 151, L. 1919; re-en. Sec. 3842, R.C.M. 1921; re-en. Sec. 3842, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1957; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-164, R.C.M. 1947; (2) thru (4)Ap p. Sec. 90, Ch. 263, L. 1955; amd. Sec. 1, Ch. 244, L. 1977; Sec. 32-2193, R.C.M. 1947; Ap. p. Sec. 284, Ch. 5, L. 1971; Sec. 75-7007, R.C.M. 1947; R.C.M. 1947, 32-2193, 72-164(part), 75-7007(part); amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 1, Ch. 449, L. 1991.

Cross-References

School bus defined, 20-10-101, 61-1-116.

Railroad sign or signal defined, 61-1-404.

Flag person defined, 61-1-411.

Explosives defined, 61-1-506.

Flammable liquid defined, 61-1-507.

Carriers of passengers, 69-11-201.

Operation of trains at grade crossings, 69-14-239.

Railroad highway crossings, Title 69, ch. 14, part 6.

61-8-350. Moving heavy equipment at railroad grade crossings. (1) No person shall operate or move any crawler-type tractor, steam shovel, derrick, roller, or any equipment or structure having a normal operating speed of 10 or less miles per hour or a vertical body or load clearance of less than one-half inch per foot of the distance between any two adjacent axles or in any event of less than 9 inches, measured above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with this section.

(2) Notice of any such intended crossing shall be given to a station agent of such railroad and reasonable time be given to such railroad to provide proper protection at such crossing.

(3) Before making any such crossing the person operating or moving any such vehicle or equipment shall first stop the same not less than 15 feet or more than 50 feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.

(4) No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car. If a flagman is provided by the railroad, movement over the crossing shall be under his direction.

History: En. Sec. 91, Ch. 263, L. 1955; R.C.M. 1947, 32-2194.

Cross-References

Flag person defined, 61-1-411.

Operation of trains at grade crossings, 69-14-239.

Railroad highway crossings, Title 69, ch. 14, part 6.

61-8-351. Meeting or passing school bus — penalty. (1) The driver of a vehicle upon a highway or street either inside or outside the corporate limits of any city or town upon meeting or overtaking from either direction any school bus that has stopped on the highway or street to receive or discharge any school children:

(a) shall stop the vehicle not less than 10 feet before reaching the school bus when there is in operation on the bus a visual flashing red signal as specified in 61-9-402; and

(b) may not proceed until the children have entered the school bus or have alighted and reached the side of the highway or street and until the school bus ceases operation of its visual flashing red signal.

(2) The driver of a vehicle shall slow to a rate of speed that is reasonable under the conditions existing at the point of operation and must be prepared to stop when meeting or overtaking from either direction any school bus that is preparing to stop on the highway or street to receive or discharge school children as indicated by flashing amber lights as specified in 61-9-402.

(3) Each bus used for the transportation of school children must bear upon the front and rear plainly visible signs containing the words "SCHOOL BUS" in letters not less than 8 inches in height and, in addition, must be equipped with visual signals meeting the requirements of 61-9-402. Amber flashing lights must be actuated by the driver approximately 150 feet in cities and

approximately 500 feet in other areas before the bus is stopped to receive or discharge school children on the highway or street. Red lights must be actuated by the driver of the school bus whenever but only whenever the vehicle is stopped on the highway or street whether inside or outside the corporate limits of any city or town to receive or discharge school children. However, a school district board of trustees may, in its discretion, adopt a policy prohibiting the operation of amber or red lights when a bus is stopped at the school site to receive or discharge school children and the receipt or discharge does not involve street crossing by the children. The lights may not be operated in violation of that policy.

(4) When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school or for school functions, all markings on the bus indicating "SCHOOL BUS" must be covered or concealed.

(5) The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus that is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone that is a part of or adjacent to the highway and where pedestrians are not permitted to cross the roadway.

(6) Whenever a vehicle is established to have been in violation of subsection (1), the person in whose name the vehicle is registered is prima facie the driver of the vehicle at the time of the alleged violation.

(7) Violation of subsection (1) is punishable upon conviction by a fine of not more than $500.

History: Ap. p. Sec. 94, Ch. 263, L. 1955; amd. Sec. 1, Ch. 100, L. 1961; amd. Sec. 2, Ch. 250, L. 1965; amd. Sec. 1, Ch. 45, L. 1971; amd. Sec. 2, Ch. 244, L. 1977; Sec. 32-2197, R.C.M. 1947; Ap. p. Sec. 284, Ch. 5, L. 1971; Sec. 75-7007, R.C.M. 1947; R.C.M. 1947, 32-2197, 75-7007(part); amd. Sec. 1, Ch. 305, L. 1979; amd. Sec. 2, Ch. 221, L. 1985; amd. Sec. 1, Ch. 366, L. 1985; amd. Sec. 1, Ch. 132, L. 1993.

Cross-References

School buses and transportation, Title 20, ch. 10, part 1.

School bus defined, 20-10-101, 61-1-116.

Controlled-access highway defined, 61-1-211.

Reckless driving — passing stopped school bus, 61-8-301.

61-8-352. Prohibited operation of special lighting equipment on school buses. It shall be unlawful to operate any flashing prewarning or warning signal light on any school bus except when the school bus is preparing to stop or is stopped on a highway for the purpose of permitting school children to board or alight from said school bus.

History: Ap. p. Sec. 95, Ch. 263, L. 1955; amd. Sec. 3, Ch. 250, L. 1965; Sec. 32-2198, R.C.M. 1947; Ap. p. Sec. 284, Ch. 5, L. 1971; Sec. 32-2198, R.C.M. 1947; R.C.M. 1947, 32-2198, 75-7007(part).

Cross-References

School buses and transportation, Title 20, ch. 10, part 1.

Additional lighting equipment required on certain vehicles, 61-9-208.

61-8-353. Stopping, standing, or parking outside of business or residence districts. (1) Upon any highway outside of a business or residence district no person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the highway when it is practical to stop, park, or so leave such vehicle off such part of said highway, but in every event an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles. No person shall stop, stand, or park any vehicle upon such highway unless such vehicle can be seen by the driver of any other vehicle approaching from either direction within 500 feet and unless drivers approaching from opposite directions are visible to each other when both are at least 500 feet from the vehicle to be stopped, turned, or parked, except in cases of justifiable emergency.

(2) This section shall not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position.

History: En. Sec. 96, Ch. 263, L. 1955; R.C.M. 1947, 32-2199.

Cross-References

Special parking permits, Title 49, ch. 4, part 3.

Handicapped — special parking permit, 49-4-304.

Stop, stopping, standing, and parking defined, 61-1-407.

Business district defined, 61-1-408.

Residence district defined, 61-1-409.

Officers or highway patrol officers authorized to remove illegally stopped vehicles, 61-8-705.

Removal and sale of abandoned vehicles, Title 61, ch. 12, part 4.

61-8-354. Stopping, standing, or parking prohibited in specified places — exceptions. (1) No person shall stop, stand, or park a vehicle, except as allowed under subsection (2) or when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or highway patrol officer or traffic-control device, in any of the following places:

(a) on a sidewalk;

(b) in front of a public or private driveway;

(c) within an intersection;

(d) within 15 feet of a fire hydrant;

(e) on a crosswalk;

(f) within 20 feet of a crosswalk at an intersection;

(g) within 30 feet upon the approach to any flashing beacon, stop sign, or traffic-control signal located at the side of a roadway;

(h) between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless the local authorities indicate a different length by signs or markings;

(i) within 50 feet of the nearest rail of a railroad crossing;

(j) within 20 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of said entrance when properly signposted;

(k) alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;

(l) on the roadway side of any vehicle stopped or parked at the edge or curb of a street;

(m) upon any bridge or other elevated structure upon a highway or within a highway tunnel;

(n) at any place where official signs prohibit stopping.

(2) A bicycle may be parked on a sidewalk and other such places if the parking does not impede normal and reasonable movement of pedestrians or other traffic.

(3) A public bus stop may not be established in the areas described in subsections (1)(a) through (1)(c) and (1)(e). Otherwise, this section does not prohibit the establishment of public bus stops and the regulation of their use by a local government. Such a bus stop must be established by ordinance pursuant to a traffic and engineering study. Such establishment is subject to review and approval by the department of transportation if the bus stop is to be established on a street or highway under its jurisdiction.

(4) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such distance as is unlawful.

History: En. Sec. 98, Ch. 263, L. 1955; R.C.M. 1947, 32-21-101; amd. Sec. 1, Ch. 417, L. 1981; amd. Sec. 6, Ch. 450, L. 1983; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Construction and maintenance of sidewalks, curbs, and gutters, 7-14-4122.

Municipal bus service, Title 7, ch. 14, part 44.

Bicycle defined, 61-1-123.

Private road or driveway defined, 61-1-205.

Sidewalk defined, 61-1-208.

Crosswalk defined, 61-1-209.

Intersection defined, 61-1-212.

Safety zone defined, 61-1-405.

Stop, stopping, standing, and parking defined, 61-1-407.

Obedience to police officers and highway patrol officers, 61-8-105.

Officers or highway patrol officers authorized to remove illegally stopped vehicles, 61-8-705.

Removal and sale of abandoned vehicles, Title 61, ch. 12, part 4.

Railroad highway crossings, Title 69, ch. 14, part 6.

61-8-355. Additional parking regulations. (1) Except as otherwise provided in this section, a vehicle stopped or parked upon a roadway where there are adjacent curbs shall be stopped or parked with the right-hand wheels of the vehicle parallel to and within 18 inches of the right-hand curb.

(2) A local authority may by ordinance permit parking of a vehicle with the left-hand wheels adjacent to and within 18 inches of the left-hand curb of a one-way roadway.

(3) A local authority may by ordinance permit angle parking on a roadway, except that angle parking shall not be permitted on any federal-aid or state highway unless the department of transportation determines that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

(4) The department with respect to highways under its jurisdiction may place signs prohibiting or restricting the stopping, standing, or parking of vehicles on a highway where in its opinion this stopping, standing, or parking is dangerous to those using the highway or where the stopping, standing, or parking of vehicles would unduly interfere with the free movement of traffic on it. These signs shall be official signs, and a person may not stop, stand, or park a vehicle in violation of the restrictions stated on these signs.

History: En. Sec. 99, Ch. 263, L. 1955; amd. Sec. 66, Ch. 316, L. 1974; R.C.M. 1947, 32-21-102; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Construction and maintenance of sidewalks, curbs, and gutters, 7-14-4122.

Stop, stopping, standing, and parking defined, 61-1-407.

Department of Transportation to sign all state highways, 61-8-203.

Officers or highway patrol officers authorized to remove illegally stopped vehicles, 61-8-705.

61-8-356. Prohibition against parking or leaving vehicles on public property — presumption of ownership. (1) A vehicle may not be parked or left standing upon the right-of-way of a public highway for a period longer than 48 hours or upon a city street or state, county, or city property for a period longer than 5 days.

(2) The abandonment of a motor vehicle on a public highway, a city street, public property, or private property creates a prima facie presumption that the last-registered owner of the motor vehicle is responsible for the abandonment and is liable for the costs incurred in removing, storing, and disposing of the abandoned vehicle, less the amount realized if the motor vehicle is sold.

(3) The filing of a verified theft report with a law enforcement agency prior to the abandonment relieves the last-registered owner of liability under subsection (2).

History: En. Sec. 1, Ch. 288, L. 1967; amd. Sec. 1, Ch. 169, L. 1969; R.C.M. 1947, 53-901; amd. Sec. 13, Ch. 283, L. 1995; amd. Sec. 252, Ch. 42, L. 1997.

Cross-References

Officers or highway patrol officers authorized to remove illegally stopped vehicles, 61-8-705.

Penalty for leaving vehicle on public property, 61-8-719.

Removal and sale of abandoned vehicles, Title 61, ch. 12, part 4.

61-8-357. Unattended motor vehicles. No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine and effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the highway in such a manner as to prevent the vehicle from rolling onto the roadway.

History: En. Sec. 100, Ch. 263, L. 1955; R.C.M. 1947, 32-21-103.

Cross-References

Lamps on parked vehicles, 61-9-214.

61-8-358. Limitations on backing. The driver of a vehicle shall not back the same unless such movement can be made with reasonable safety and without interfering with other traffic.

History: En. Sec. 101, Ch. 263, L. 1955; R.C.M. 1947, 32-21-104.

61-8-359. Riding on motorcycles. (1) A person operating a motorcycle or quadricycle on public streets or highways shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person; nor shall any other person ride on a motorcycle or quadricycle unless such motorcycle or quadricycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons or upon another seat firmly attached to the rear or side of the operator.

(2) No passenger shall be carried in a position that will interfere with the operation of the motorcycle or quadricycle or the view of the operator.

(3) No person operating a motorcycle or quadricycle shall carry any packages, bundles, or articles which would interfere with the operation of said vehicle in a safe and prudent manner.

(4) "Sidesaddle" riding on a motorcycle or quadricycle is prohibited.

(5) Motorcycles and quadricycles are to be operated with lights on at all times when operated on any public highway or street, except that if the motorcycle is registered under 61-3-411 as a collector's item, it may be operated without lights from one-half hour before sunrise to one-half hour after sunset if persons and vehicles are clearly discernible at a distance of 500 feet.

(6) Not more than two motorcycles shall be operated side by side in a single traffic lane.

(7) All motor vehicles, including motorcycles and quadricycles, are entitled to the full use of a traffic lane, and no vehicle shall be driven or operated in such a manner so as to deprive any other vehicle of the full use of a traffic lane, except that motorcycles may, with the consent of both drivers, be operated not more than two abreast in a single traffic lane.

(8) Every person riding a motorcycle or quadricycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a motor vehicle except as to those provisions which, by their nature, can have no application.

History: En. Sec. 102, Ch. 263, L. 1955; amd. Sec. 1, Ch. 175, L. 1967; R.C.M. 1947, 32-21-105; amd. Sec. 1, Ch. 345, L. 1983; amd. Sec. 35, Ch. 516, L. 1985.

Cross-References

Motorcycle defined, 61-1-105.

Quadricycle defined, 61-1-133.

Headlamps on motor vehicles, 61-9-203.

Headgear required for minor motorcycle riders, 61-9-417.

Motorcycle noise suppression devices, 61-9-418.

61-8-360. Obstruction to driver's view or driving mechanism. (1) No person shall drive a vehicle when it is so loaded, or when there are in the front seat such number of persons exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

(2) No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides or to interfere with his control over the driving mechanism of the vehicle.

History: En. Sec. 103, Ch. 263, L. 1955; R.C.M. 1947, 32-21-106.

Cross-References

Windshields to be unobstructed and equipped with wipers, 61-9-405.

61-8-361. Driving on mountain highways. The driver of a motor vehicle traveling through defiles or canyons or on mountain highways shall hold such motor vehicle under control and as near the right-hand edge of the highway as reasonably possible.

History: En. Sec. 104, Ch. 263, L. 1955; R.C.M. 1947, 32-21-107.

Cross-References

Provisions relating to forest development and special service roads, 61-8-110 through 61-8-112.

61-8-362. Coasting prohibited. The driver of any motor vehicle when traveling upon a downgrade shall not coast with the gears of such vehicle in neutral or with the clutch manually disengaged.

History: En. Sec. 105, Ch. 263, L. 1955; R.C.M. 1947, 32-21-108.

61-8-363. Following fire apparatus prohibited. The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than 500 feet or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm.

History: En. Sec. 106, Ch. 263, L. 1955; R.C.M. 1947, 32-21-109.

Cross-References

Local government — provision for fire equipment, 7-33-4202.

Authorized emergency vehicle defined, 61-1-119.

Following too closely, 61-8-329.

61-8-364. Crossing firehose. No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street or private driveway, to be used at any fire or alarm of fire, without the consent of the fire department official in command.

History: En. Sec. 107, Ch. 263, L. 1955; R.C.M. 1947, 32-21-110.

Cross-References

Obstructing peace officer or other public servant, 45-7-302.

61-8-365. Putting refuse on highway prohibited. (1) A person may not throw or deposit upon a highway glass bottles, glass, nails, tacks, wire, cans, paper, or any other substance likely to injure any person, animal, or vehicle upon the highway.

(2) A person who drops or permits to be dropped or thrown upon a highway destructive or injurious material shall immediately remove the material or cause it to be removed.

(3) A person removing a wrecked or damaged vehicle from a highway shall remove glass or other injurious substance dropped upon the highway from the vehicle.

(4) Except as provided in 61-8-372, a person convicted of violating this section shall be fined not less than $50. Except for the minimum fine of $50 as provided in this subsection and except for the minimum fine of $100 as provided in 61-8-372, the penalty provisions of 61-8-711 apply to this section.

History: En. Sec. 108, Ch. 263, L. 1955; R.C.M. 1947, 32-21-111; amd. Sec. 1, Ch. 510, L. 1979; amd. Sec. 4, Ch. 67, L. 1997.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Public nuisance, 45-8-111.

61-8-366. Riding on fenders or running boards prohibited. Any person driving a vehicle shall not permit passengers to ride on the fenders or running boards, nor shall any passenger ride on the fenders or running boards of a vehicle.

History: En. Sec. 109, Ch. 263, L. 1955; R.C.M. 1947, 32-21-112.

61-8-367. Riding in housetrailers. No person or persons may occupy a housetrailer while it is being moved upon a public highway unless the trailer is of a semitrailer design where some part of its own weight and that of its cargo rests upon or is carried by its towing unit through the use of a fifth-wheel type trailer hitch mounted on no less than a one-half ton rated truck.

History: En. Sec. 109.1, Ch. 263, L. 1955, as added by Sec. 1, Ch. 167, L. 1957; amd. Sec. 1, Ch. 21, L. 1975; R.C.M. 1947, 32-21-112.1.

Cross-References

Dolly or converter gear defined, 61-1-113.

Housetrailer defined, 61-1-501.

61-8-368. Opening and closing vehicle doors. No person shall open any door of a motor vehicle unless and until it is reasonably safe to do so without interfering with the movement of other traffic, nor shall any person leave a door open on a side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

History: En. Sec. 109.2, Ch. 263, L. 1955, as added by Sec. 1, Ch. 167, L. 1957; R.C.M. 1947, 32-21-112.2; amd. Sec. 7, Ch. 450, L. 1983.

61-8-369. Shooting from or across road or highway right-of-way. Except as provided in 87-2-803(4), no person shall shoot any firearm from or across the right-of-way of any state or federal highway or county road.

History: En. Sec. 110, Ch. 263, L. 1955; amd. Sec. 1, Ch. 25, L. 1974; R.C.M. 1947, 32-21-113; amd. Sec. 1, Ch. 214, L. 1985; amd. Sec. 1, Ch. 416, L. 1985.

Cross-References

Observance of right to keep and bear arms, 1-1-224.

Official observance of Montana's hunting heritage, 1-1-226.

Creating hazard, 45-8-113.

Hunting — general restrictions, 87-3-101.

Restrictions on use of motor vehicles while hunting, 87-3-125.

61-8-370. Securing of load — requirement. A person operating a loaded vehicle on a public highway for the purpose of transporting solid waste as defined in 75-10-203, except a commercial motor vehicle or a vehicle transporting unprocessed agricultural products, shall attach, cover, or otherwise secure the load sufficiently to prevent littering or creating an obstruction dangerous to the public traveling on the highway.

History: En. Sec. 1, Ch. 374, L. 1991.

61-8-371. Operation of motor vehicle or off-highway vehicle below high-water mark on certain state or federal lands prohibited — exceptions. (1) Except as provided in subsections (2) and (3), a person may not operate a motor vehicle, as defined in 61-1-102, or an off-highway vehicle, as defined in 23-2-801, below the ordinary high-water mark, as defined in 23-2-301, of class I or class II waters, as defined in 23-2-301, that occurs on state or federal lands or below the ordinary high-water mark of class I waters flowing through private lands, within that portion of the streambed that is covered with water.

(2) A motor vehicle or an off-highway vehicle may be operated below the ordinary high-water mark on state or federal lands on an established road or trail that enters or crosses a stream, but the stream crossing must be by the shortest practical or designated route to the road or trail on the opposite bank.

(3) The prohibition in subsection (1) does not apply to:

(a) off-highway or motor vehicle use that occurs on state or federal land that is designated for off-highway or motor vehicle use below the ordinary high-water mark if the use is in accordance with the requirements of the authorization;

(b) off-highway or motor vehicle use conducted on state or federal land pursuant to and in accordance with a specific written authorization from the appropriate land management agency for that use below the ordinary high-water mark; and

(c) operation of an off-highway vehicle by a nonambulatory person who is using the vehicle for recreational use, as defined in 23-2-301, as long as operation of the vehicle is prudent and minimizes destruction.

(4) The state may authorize the use of a motor vehicle or off-highway vehicle on state property below the ordinary high-water mark only when the state has determined that the use will have a minimal impact on the streambed and on the fish and wildlife ecology of the stream or river. Federal land management agencies are requested to apply the same criteria when authorizing use of federal land.

History: En. Sec. 1, Ch. 491, L. 1991.

61-8-372. Littering with lighted matches, cigarettes, and other burning material and dumping ashtray prohibited — penalty — posting. (1) A person may not throw away lighted matches, tobacco, cigarettes, cigars, or other lighted material on a forest road, private road, city street, county road, public highway, or railroad right-of-way, except lighted materials used as safety signaling devices, in this state.

(2) A person may not empty an ashtray containing matches, ashes, cigarette or cigar refuse, or other related material on a forest road, private road, city street, county road, public highway, or railroad right-of-way in this state.

(3) A person convicted of violating subsection (1) or (2) shall be fined a minimum of $100.

(4) Municipalities, the forest service, county governments, property owners, public transit operators, federal highway administrators, and any other appropriate entity may, at their discretion, post copies of this section in conspicuous locations.

History: En. Sec. 1, Ch. 67, L. 1997.

61-8-373 through 61-8-379 reserved.

61-8-380. Funeral procession right-of-way — funeral lead vehicle and funeral escort vehicle in funeral procession. (1) Except as provided in subsection (4), pedestrians and operators of motor vehicles shall yield the right-of-way to a motor vehicle that is part of a funeral procession being led by a funeral lead vehicle or a funeral escort vehicle.

(2) After a funeral lead vehicle enters an intersection, the other vehicles in the funeral procession may continue to follow the funeral lead vehicle through the intersection despite any official traffic-control device, right-of-way provisions of this chapter, or local ordinance if the operator exercises reasonable care toward any other vehicle or pedestrian. When the funeral lead vehicle arrives at an intersection, it must comply with the requirements of any official traffic-control device, right-of-way provision of this chapter, and local ordinance.

(3) Except as provided in subsection (4), a driver of a funeral escort vehicle may direct the drivers of other vehicles in a funeral procession to proceed through an intersection or to make turns or other movements despite any official traffic-control device. The driver of a funeral escort vehicle may direct and control the drivers of vehicles not in a funeral procession, including those in or approaching an intersection, to stop, proceed, or make turns or other movements without regard to an official traffic-control device. Persons

directing traffic shall comply with the provisions of 61-1-411. However, use of a funeral escort vehicle is not required.

(4) A vehicle in a funeral procession has the right-of-way at intersections regardless of official traffic-control devices provided the driver of that vehicle and the drivers of all vehicles in the funeral procession meet all the requirements of 61-1-413 through 61-1-415 and 61-8-380 through 61-8-384, except that an operator of a vehicle in a funeral procession shall yield the right-of-way to an approaching authorized emergency vehicle giving an audible or visual signal or when directed to do so by a highway patrol officer or police officer. This section does not relieve the driver of a vehicle in a funeral procession from the duty to drive with due regard for the safety of all persons using the highway.

History: En. Sec. 5, Ch. 338, L. 1991.

61-8-381. Equipment required for funeral vehicle — restricted light use. (1) A funeral escort vehicle or a funeral lead vehicle must be equipped with at least one lighted rotating or oscillating lamp exhibiting an amber light or lens visible under normal atmospheric conditions for a distance of 500 feet from the front of the vehicle.

(2) A funeral escort vehicle or a funeral lead vehicle may illuminate a rotating or oscillating amber light only when the vehicle is in use in a funeral procession.

History: En. Sec. 6, Ch. 338, L. 1991.

61-8-382. Driving in funeral procession. (1) A vehicle in a funeral procession shall follow the preceding vehicle in the funeral procession as closely as is practicable and safe.

(2) An ordinance, law, or regulation requiring that motor vehicles be operated to allow sufficient space between them to enable another vehicle to enter and occupy that space without danger does not apply to vehicles in a funeral procession.

(3) The driver of a motor vehicle in a funeral procession may not drive the vehicle at a speed greater than:

(a) 55 miles per hour on a highway where the posted speed limit is 55 miles per hour or more; or

(b) 5 miles per hour below the posted speed limit on other streets or roads.

(4) A vehicle being operated in a funeral procession must have its headlights and taillights illuminated.

(5) The turn signals must be flashing simultaneously as warning lights on a vehicle that:

(a) is the first vehicle in a funeral procession; or

(b) the driver has reason to believe is the last vehicle in a funeral procession.

History: En. Sec. 7, Ch. 338, L. 1991.

61-8-383. Vehicles not in funeral procession. The driver of a vehicle that is not part of a funeral procession may not:

(1) drive between the vehicles forming a funeral procession while they are in motion except when:

(a) authorized to do so by a police officer; or

(b) driving an authorized emergency vehicle emitting an audible or visible signal;

(2) join a funeral procession to secure the right-of-way granted by 61-8-380;

(3) pass a funeral procession on a multiple-lane highway on the funeral procession's right side unless the funeral procession is in the farthest left lane;

(4) enter an intersection, even if the driver is facing a green traffic-control signal, when a funeral procession being conducted in compliance with 61-1-413 through 61-1-415 and 61-8-380 through 61-8-384 is proceeding through a red traffic-control signal at that intersection as permitted by 61-8-380 unless the driver can do so without crossing the path of the funeral procession. If the red signal changes to green while the funeral procession is within the intersection, the driver of a vehicle facing a green signal may proceed subject to the right-of-way of a vehicle participating in a funeral procession.

History: En. Sec. 8, Ch. 338, L. 1991.

61-8-384. Liability. The operator of a vehicle in a funeral procession, including a lead vehicle or an escort vehicle, is not negligent if he operates the vehicle in accordance with the requirements of 61-1-413 through 61-1-415 and 61-8-380 through 61-8-384. When no negligence exists on the part of the operator of a vehicle in a funeral procession, none may be imputed to the funeral director or mortician organizing the procession, to the agent of the funeral director or mortician, or to a member of a local law enforcement agency acting as the agent, with or without compensation, of the funeral director or mortician.

History: En. Sec. 9, Ch. 338, L. 1991.

Part 4

Driving Under Influence of Alcohol or Drugs

Part Cross-References

Crime victims compensation — criminally injurious conduct, 53-9-103.

61-8-401. Driving under influence of alcohol or drugs. (1) It is unlawful and punishable, as provided in 61-8-442, 61-8-714, and 61-8-731 through 61-8-734, for a person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;

(b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;

(c) any other drug to drive or be in actual physical control of a vehicle within this state; or

(d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a motor vehicle has been diminished.

(4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person at the time of a test, as shown by analysis of a sample of the person's blood or breath drawn or taken within a reasonable time after the alleged act, gives rise to the following inferences:

(a) If there was at that time an alcohol concentration of 0.04 or less, it may be inferred that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of 0.04 but less than 0.10, that fact may not give rise to any inference that the person was or was not under the influence of alcohol, but the fact may be considered with other competent evidence in determining the guilt or innocence of the person.

(c) If there was at that time an alcohol concentration of 0.10 or more, it may be inferred that the person was under the influence of alcohol. The inference is rebuttable.

(5) The provisions of subsection (4) do not limit the introduction of any other competent evidence bearing upon the issue of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs.

(6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-410, 61-8-714, 61-8-722, 61-8-731 through 61-8-734, and subsections (1) through (5) of this section, with the word "state" in 61-8-406 and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties provided in the ordinance.

(7) Absolute liability as provided in 45-2-104 will be imposed for a violation of this section.

History: En. Sec. 39, Ch. 263, L. 1955; amd. Sec. 1, Ch. 194, L. 1957; amd. Sec. 3, Ch. 201, L. 1957; amd. Sec. 1, Ch. 109, L. 1961; amd. Sec. 1, Ch. 132, L. 1971; amd. Sec. 1, Ch. 289, L. 1977; amd. Sec. 1, Ch. 430, L. 1977; R.C.M. 1947, 32-2142(part); amd. Sec. 69, Ch. 421, L. 1979; amd. Sec. 2, Ch. 659, L. 1983; amd. Sec. 5, Ch. 698, L. 1983; amd. Sec. 2, Ch. 99, L. 1985; amd. Sec. 2, Ch. 350, L. 1987; amd. Sec. 3, Ch. 484, L. 1987; amd. Sec. 1, Ch. 612, L. 1987; amd. Sec. 1, Ch. 789, L. 1991; amd. Sec. 2, Ch. 88, L. 1997; amd. Sec. 6, Ch. 107, L. 1997; amd. Sec. 4, Ch. 512, L. 1997; amd. Sec. 2, Ch. 525, L. 1997.

Cross-References

Municipal traffic and motor vehicle regulation, 7-14-4102, 7-14-4103.

Boats — prohibited operation, 23-2-523.

Boats — alcohol concentration standards, 23-2-535.

Responsibility — intoxicated or drugged condition, 45-2-203.

Negligent vehicular assault, 45-5-205.

Scheduling of dangerous drugs, Title 50, ch. 32, part 2.

Criminal laws limitation, 53-24-106.

Definition of vehicle, 61-1-103.

Offenses furnishing ground for suspension or revocation of license, 61-5-405.

Definition of ways of this state open to the public, 61-8-101.

Operation of motor vehicle by person with blood alcohol concentration of 0.10 or more, 61-8-406.

Multiple convictions prohibited, 61-8-408.

Forfeiture of motor vehicle for conviction of third offense, 61-8-714.

Penalty for driving with excessive blood alcohol concentration, 61-8-722.

Habitual traffic offenders, Title 61, ch. 11, part 2.

61-8-402. Blood or breath tests for alcohol, drugs, or both. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the officer has reasonable grounds to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401;

(ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

(iii) the officer has probable cause to believe that the person was driving or in actual physical control of a vehicle in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage, bodily injury, or death.

(b) The arresting or investigating officer may designate which test or tests are administered.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

(4) If an arrested person refuses to submit to one or more tests requested and designated by the officer as provided in subsection (2), the refused test or tests may not be given, but the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection (6).

(5) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension or revocation and the right to a hearing provided in 61-8-403.

(6) The following suspension and revocation periods are applicable upon refusal to submit to one or more tests:

(a) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

(b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a revocation of 1 year with no provision for a restricted probationary license.

(7) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(8) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior

boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-403.

(9) A suspension under this section is subject to review as provided in this part.

(10) This section does not apply to blood and breath tests, samples, and analyses used for purposes of medical treatment or care of an injured motorist or related to a lawful seizure for a suspected violation of an offense not in this part.

History: En. Sec. 1, Ch. 131, L. 1971; R.C.M. 1947, 32-2142.1; amd. Sec. 1, Ch. 103, L. 1981; amd. Sec. 1, Ch. 602, L. 1983; amd. Sec. 3, Ch. 659, L. 1983; amd. Sec. 8, Ch. 698, L. 1983; amd. Sec. 3, Ch. 99, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 2, Ch. 789, L. 1991; amd. Sec. 1, Ch. 564, L. 1993; amd. Sec. 1, Ch. 444, L. 1995; amd. Sec. 6, Ch. 447, L. 1995; amd. Sec. 3, Ch. 88, L. 1997; amd. Sec. 1, Ch. 287, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 287 in (5) after "which is" inserted "effective 12 hours after issuance and is"; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Basis of opinion testimony by experts, Rule 703, M.R.Ev. (see Title 26, ch. 10).

Definition of vehicle, 61-1-103.

License reinstatement fee to fund county drinking and driving prevention programs, 61-2-107.

Authority of Department of Justice to suspend license or driving privilege, 61-5-206.

Definition of ways of this state open to the public, 61-8-101.

61-8-403. Right of appeal to court. (1) Within 30 days after notice of the right to a hearing has been given by a peace officer, a person may file a petition to challenge the license suspension or revocation in the district court in the county where the person resides or in the county where the arrest was made.

(2) The court has jurisdiction and shall set the matter for hearing. The court shall give at least 10 days' written notice of the hearing to the county attorney of the county where the appeal is filed and to the city attorney if the incident leading to the suspension or revocation resulted in a charge filed in a city or municipal court. The county attorney or city attorney may represent the state. If the county attorney and the city attorney cannot agree on who will represent the state, the county attorney shall represent the state.

(3) Upon request of the petitioner, the court may order the department to return the seized license or issue a stay of the suspension or revocation action pending the hearing.

(4) (a) The court shall take testimony and examine the facts of the case, except that the issues are limited to whether:

(i) a peace officer had reasonable grounds to believe that the person had been driving or was in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person was placed under arrest for violation of 61-8-401;

(ii) the person is under the age of 21 and was placed under arrest for a violation of 61-8-410;

(iii) the officer had probable cause to believe that the person was driving or in actual physical control of a vehicle in violation of 61-8-401 and the person was involved in a motor vehicle accident or collision resulting in property damage, bodily injury, or death; and

(iv) the person refused to submit to one or more tests designated by the officer.

(b) Based on the above issues and no others, the court shall determine whether the petitioner is entitled to a license or whether the petitioner's license is subject to suspension or revocation.

(5) This section does not grant a right of appeal to a state court if a driver's license is initially seized, suspended, or revoked pursuant to a tribal law or regulation that requires alcohol or drug testing of motor vehicle operators.

History: En. Sec. 2, Ch. 131, L. 1971; R.C.M. 1947, 32-2142.2(a); amd. Sec. 2, Ch. 103, L. 1981; amd. Sec. 2, Ch. 602, L. 1983; amd. Sec. 4, Ch. 659, L. 1983; amd. Sec. 9, Ch. 698, L. 1983; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 3, Ch. 789, L. 1991; amd. Sec. 1, Ch. 388, L. 1993; amd. Sec. 2, Ch. 564, L. 1993; amd. Sec. 2, Ch. 444, L. 1995; amd. Sec. 4, Ch. 88, L. 1997.

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.

District Court jurisdiction, Title 3, ch. 5, part 3.

County Attorney — duties related to state matters, 7-4-2716.

Definition of ways of this state open to the public, 61-8-101.

61-8-404. Evidence admissible — conditions of admissibility. (1) Upon the trial of a criminal action or other proceeding arising out of acts alleged to have been committed by a person in violation of 61-8-401, 61-8-406, 61-8-410, or 61-8-805:

(a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood or breath, is admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at the time the person was in control of a motor vehicle. A person may not be convicted of a violation of 61-8-401 based upon the presence of a drug or drugs in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

(b) a report of the facts and results of one or more tests of a person's blood or breath is admissible in evidence if:

(i) a breath test or preliminary alcohol screening test was performed by a person certified by the forensic sciences division of the department to administer the test;

(ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a laboratory exempt from certification under the rules of the department and the blood was withdrawn from the person by a person competent to do so under 61-8-405(1);

(c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a person is admissible in evidence if it was made by a person trained by the department or by a person who has received training recognized by the department.

(2) If the person under arrest refused to submit to one or more tests as provided in this section, proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state

open to the public, while under the influence of alcohol, drugs, or a combination of alcohol and drugs.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs.

History: En. Sec. 2, Ch. 131, L. 1971; R.C.M. 1947, 32-2142.2(b) thru (d); amd. Sec. 3, Ch. 103, L. 1981; amd. Sec. 5, Ch. 659, L. 1983; amd. Sec. 10, Ch. 698, L. 1983; amd. Sec. 4, Ch. 99, L. 1985; amd. Sec. 4, Ch. 789, L. 1991; amd. Sec. 3, Ch. 564, L. 1993; amd. Sec. 5, Ch. 88, L. 1997; amd. Sec. 85, Ch. 51, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 51 in (1)(a) near middle of first sentence after "time of" substituted "a test" for "the act alleged"; and made minor changes in style. Amendment effective March 15, 1999.

Cross-References

Admissibility of evidence, Rules 104 and 105, M.R.Ev. (see Title 26, ch. 10).

Responsibility — intoxicated or drugged condition, 45-2-203.

Definition of vehicle, 61-1-103.

Definition of ways of this state open to the public, 61-8-101.

61-8-405. Administration of tests. (1) Only a physician or registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse, may, at the request of a peace officer, withdraw blood for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. This limitation does not apply to the sampling of breath.

(2) In addition to any test administered at the direction of a peace officer, a person may request that an independent blood sample be drawn by a physician or registered nurse for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. The peace officer may not unreasonably impede the person's right to obtain an independent blood test. The officer may but has no duty to transport the person to a medical facility or otherwise assist the person in obtaining the test. The cost of an independent blood test is the sole responsibility of the person requesting the test. The failure or inability to obtain an independent test by a person does not preclude the admissibility in evidence of any test given at the direction of a peace officer.

(3) Upon the request of the person tested, full information concerning any test given at the direction of the peace officer must be made available to the person or the person's attorney.

(4) A physician or registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse, does not incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer a test.

(5) The department in cooperation with any appropriate agency shall adopt uniform rules for the giving of tests and may require certification of training to administer the tests as considered necessary.

History: En. Sec. 3, Ch. 131, L. 1971; R.C.M. 1947, 32-2142.3; amd. Sec. 4, Ch. 103, L. 1981; amd. Secs. 1, 13, Ch. 503, L. 1985; amd. Sec. 14, Ch. 378, L. 1989; amd. Sec. 5, Ch. 789, L. 1991; amd. Sec. 4, Ch. 564, L. 1993; amd. Sec. 6, Ch. 88, L. 1997.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Boats — administration of alcohol concentration tests, 23-2-535.

General provisions governing discovery, Rule 26, M.R.Civ.P. (see Title 25, ch. 20).

Licensing of physicians, Title 37, ch. 3, part 3.

Licensing of nurses, Title 37, ch. 8, part 4.

Division of Forensic Sciences, Title 44, ch. 3, part 1.

61-8-406. Operation of vehicle by a person with alcohol concentration of 0.10 or more. It is unlawful and punishable as provided in 61-8-442, 61-8-722, 61-8-723, and 61-8-731 through 61-8-734 for any person to drive or be in actual physical control of a vehicle upon the ways of this state open to the public while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or urine, is 0.10 or more. Absolute liability as provided in 45-2-104 will be imposed for a violation of this section.

History: En. Sec. 4, Ch. 698, L. 1983; amd. Sec. 5, Ch. 99, L. 1985; amd. Sec. 3, Ch. 350, L. 1987; amd. Sec. 4, Ch. 484, L. 1987; amd. Sec. 6, Ch. 789, L. 1991; amd. Sec. 7, Ch. 107, L. 1997; amd. Sec. 4, Ch. 512, L. 1997; amd. Sec. 3, Ch. 525, L. 1997.

Cross-References

Definition of vehicle, 61-1-103.

Revocation, suspension, or cancellation of licenses, Title 61, ch. 5, part 2.

Definition of ways of the state open to the public, 61-8-101.

Operation of motor vehicle by person under influence of alcohol or drugs, 61-8-401.

Penalty for operation of motor vehicle by person under influence of alcohol or drugs, 61-8-714.

Forfeiture of motor vehicle for conviction of third offense, 61-8-722.

61-8-407. Definition of alcohol concentration. For purposes of 16-6-305, 23-2-535, 67-1-211, and this title, "alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

History: En. Sec. 7, Ch. 698, L. 1983; amd. Sec. 6, Ch. 448, L. 1989; amd. Sec. 253, Ch. 42, L. 1997; amd. Sec. 7, Ch. 88, L. 1997.

Cross-References

Boats — alcohol concentration, 23-2-535.

Chemical blood, breath, or urine tests, 61-8-402.

61-8-408. Multiple convictions prohibited. When the same acts may establish the commission of an offense under both 61-8-401 and 61-8-406, a person charged with such conduct may be prosecuted for a violation of both 61-8-401 and 61-8-406. However, he may only be convicted of an offense under either 61-8-401 or 61-8-406.

History: En. Sec. 6, Ch. 698, L. 1983.

Cross-References

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

61-8-409. Preliminary alcohol screening test. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a preliminary alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol concentration, upon the request of a peace officer who has a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410.

(2) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person submitting to a preliminary alcohol screening test pursuant to this section.

(3) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit to the preliminary alcohol screening test will result in the suspension or revocation for up to 1 year of that person's driver's license.

(4) If the person refuses to submit to a test under this section, a test will not be given. However, the refusal is sufficient cause to suspend or revoke the person's driver's license as provided in 61-8-402.

(5) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410 and whether the person refused to submit to the test.

(6) The provisions of 61-8-402 (3) through (8) that do not conflict with this section are applicable to refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the same incident, the department may not consider each a separate refusal for purposes of suspension or revocation under 61-8-402.

(7) A test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the preliminary alcohol screening test have been certified by the department pursuant to rules adopted under the authority of 61-8-405(5).

History: En. Sec. 1, Ch. 447, L. 1995; amd. Sec. 8, Ch. 88, L. 1997.

61-8-410. Operation of vehicle by person under twenty-one with alcohol concentration of 0.02 or more. (1) It is unlawful for a person under the age of 21 who has an alcohol concentration of 0.02 or more to drive or be in actual physical control of a vehicle upon ways of this state open to the public. Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section.

(2) Upon a first conviction under this section, a person shall be punished by a fine of not less than $100 or more than $500.

(3) Upon a second conviction under this section, a person shall be punished by a fine of not less than $200 or more than $500 and, if the person is 18 years of age or older, by incarceration for not more than 10 days.

(4) Upon a third or subsequent conviction under this section, a person shall be punished by a fine of not less than $300 or more than $500 and, if the person is 18 years of age or older, by incarceration for not less than 24 consecutive hours or more than 60 days.

(5) In addition to the punishment provided in this section, regardless of disposition:

(a) the person shall comply with the chemical dependency education course and chemical dependency treatment provisions in 61-8-732 as ordered by the court; and

(b) the department shall suspend the person's driver's license for 90 days upon the first conviction, 6 months upon the second conviction, and 1 year upon the third or subsequent conviction. A restricted or probationary driver's license may not be issued during the suspension period until the person has paid a license reinstatement fee in accordance with 61-2-107 and, if the person was under the age of 18 at the time of the offense, has completed at least 30 days of the suspension period.

(6) A conviction under this section may not be counted as a prior conviction under 61-8-401 or 61-8-406.

History: En. Sec. 2, Ch. 447, L. 1995; amd. Sec. 1, Ch. 520, L. 1997; amd. Sec. 2, Ch. 455, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 455 in (5)(a) after "comply with the" substituted "chemical dependency education" for "alcohol information", before "treatment" substituted "chemical dependency" for "alcohol and drug", and after "provisions in" substituted "61-8-732 as ordered by the court" for "61-8-714". Amendment effective October 1, 1999.

Cross-References

Offenses committed by persons under age of 18, 61-8-723.

61-8-411 through 61-8-420 reserved.

61-8-421. Forfeiture procedure. (1) A motor vehicle forfeited under 61-8-733 must be seized by the arresting agency within 10 days after the conviction and disposed of as provided in Title 44, chapter 12, part 2. Except as provided in this section, the provisions of Title 44, chapter 12, part 2, apply to the extent applicable.

(2) Forfeiture proceedings under 44-12-201(1) must be instituted by the arresting agency within 20 days after the seizure of the motor vehicle.

(3) For purposes of 44-12-203 and 44-12-204, there is a rebuttable presumption of forfeiture. The owner of the motor vehicle may rebut the presumption by proving a defense under 61-8-733(2) or by proving that the owner was not convicted of a third or subsequent offense under 61-8-401 or 61-8-406. It is not a defense that the convicted person owns the motor vehicle jointly with another person.

(4) (a) For purposes of 44-12-206, the proceeds of the sale of the motor vehicle must be distributed first to the holders of security interests who have presented proper proof of their claims, up to the amount of the interests or the amount received from the sale, whichever is less, and the remainder to the general fund of the arresting agency.

(b) A holder of a security interest may petition the sentencing court for transfer of title to the motor vehicle to the holder of the security interest if the secured interest is equal to or greater than the estimated value of the motor vehicle.

(5) Actions the court may take under 44-12-205(3) to protect the rights of innocent persons include return of the motor vehicle without a sale to an owner who is unable to present an adequate defense under this section but is found by the court to be without fault.

History: En. Sec. 3, Ch. 474, L. 1993; amd. Sec. 7, Ch. 447, L. 1995; amd. Sec. 4, Ch. 525, L. 1997.

61-8-422. Prohibition on transfer, sale, or encumbrance of vehicles subject to seizure or forfeiture — penalty. (1) It is unlawful for the owner of a vehicle subject to seizure under 61-5-212 or seizure and forfeiture under 61-8-733 to transfer, sell, or encumber the owner's interest in that vehicle from the time of the owner's arrest or the filing of the underlying charge until the time that the underlying charge is dismissed, the owner is acquitted of the underlying charge, the issue of seizure or forfeiture is resolved by the sentencing court, or the underlying charge is otherwise terminated.

(2) The prohibition against transfer of title may not be stayed pending the determination of an appeal from the conviction on the underlying charge.

(3) A person who violates this section is guilty of a felony and upon conviction shall be imprisoned in the county jail for not more than 2 years, fined an amount not more than $20,000, or both.

History: En. Sec. 3, Ch. 447, L. 1995; amd. Sec. 254, Ch. 42, L. 1997; amd. Sec. 5, Ch. 525, L. 1997.

61-8-423 through 61-8-439 reserved.

61-8-440. Ignition interlock device — assisting in starting and operating — circumventing — penalty. (1) It is unlawful for a person who is subject to a restriction under 61-8-442 to operate a motor vehicle not equipped with an ignition interlock device.

(2) A person may not knowingly assist a person who is restricted to the use of an ignition interlock device to start and operate the restricted person's vehicle.

(3) A person may not knowingly circumvent the operation of an ignition interlock device.

(4) A person convicted of a violation of this section shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months or both.

(5) This section does not apply if:

(a) the starting of a motor vehicle or the request to start a motor vehicle equipped with an ignition interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle; and

(b) the person subject to the restriction does not operate the vehicle.

History: En. Sec. 2, Ch. 107, L. 1997.

61-8-441. Department rules regarding ignition interlock devices. (1) The department shall adopt rules providing for the approval of ignition interlock devices and the installation, calibration, repair, and removal of approved devices.

(2) The department's rules must be based upon federal standards issued for similar devices.

(3) An ignition interlock device that is approved by the department must also:

(a) be designed so it does not impede safe operation of the vehicle;

(b) correlate well with the level established for alcohol impairment;

(c) work accurately and reliably in an unsupervised environment and under extreme weather conditions;

(d) require a deep lung breath sample or use an equally accurate measure of blood alcohol concentration equivalence;

(e) resist tampering and show evidence of tampering if it is attempted;

(f) be difficult to circumvent;

(g) minimize inconvenience of a sober user;

(h) operate reliably over the range of automobile environments and in connection with various manufacturing standards;

(i) be manufactured by a person who is adequately insured for product liability; and

(j) have a label affixed in a prominent location warning that a person who knowingly tampers with, circumvents, or otherwise misuses the device is subject to criminal prosecution.

History: En. Sec. 3, Ch. 107, L. 1997.

61-8-442. Driving under the influence of alcohol or drugs — driving with excessive alcohol concentration — ignition interlock device discretionary on first offense. (1) In addition to the punishments provided in 61-8-714 and 61-8-722, regardless of disposition, the court may restrict a defendant to driving only a motor vehicle equipped with a functioning ignition interlock device and require the defendant to pay the reasonable cost of leasing, installing, and maintaining the device if:

(a) the court determines that approved ignition interlock devices are reasonably available;

(b) the defendant's blood alcohol concentration at the time of the arrest was 0.18% or greater; and

(c) the defendant has not been previously convicted of a violation of 61-8-401 or 61-8-406.

(2) Any restriction imposed under this section must be included in a report of the conviction made by the court to the department in accordance with 61-11-101 and placed upon the person's driving record maintained by the department in accordance with 61-11-102.

(3) The duration of a restriction imposed under this section must run parallel to the time period for suspension of the driver's license of the defendant in accordance with 61-2-107, 61-5-205, and 61-5-208 and must be monitored by the department.

History: En. Sec. 8, Ch. 107, L. 1997; amd. Sec. 3, Ch. 258, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 258 in (1)(c) substituted "has not been previously convicted" for "previously has been convicted"; in (3) after "suspension" deleted "or revocation"; and made minor changes in style. Amendment effective October 1, 1999.

Part 5
Pedestrian Traffic

Part Cross-References

Pedestrian malls, Title 7, ch. 14, part 47.

Duty and civil liability of pedestrian or driver approaching blind person, 49-4-216.

Penalty for violation of duty or unauthorized use of cane, 49-4-217.

"Pedestrian" defined, 61-1-308.

61-8-501. Pedestrians subject to traffic regulations. (1) Pedestrians shall be subject to traffic-control signals at intersections as provided in 61-8-207 unless required by local ordinance to comply strictly with such signals, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this part.

(2) Local authorities are hereby empowered by ordinance to require that pedestrians shall strictly comply with the directions of any official traffic-control signal and may by ordinance prohibit pedestrians from crossing

any roadway in a business district or any designated highways except in a crosswalk.

History: **En. Sec. 73, Ch. 263, L. 1955; R.C.M. 1947, 32-2176.**

Cross-References

Municipal ordinances, 7-5-4201.
Crosswalk defined, 61-1-209.
Traffic-control signal defined, 61-1-402.
Business district defined, 61-1-408.

61-8-502. Pedestrians' right-of-way in crosswalk. (1) (a) Except as provided in subsection (1)(b), when traffic-control signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a marked crosswalk or within an unmarked crosswalk at an intersection, but a pedestrian may not suddenly leave a curb or other place of safety and walk or run into the path of a vehicle that is so close that it is impossible for the driver to yield. This provision does not apply under the conditions stated in 61-8-503(2).

(b) When a vehicle is stopped at a marked crosswalk or at an unmarked crosswalk at an intersection, the driver of a vehicle may make a right-hand turn if the pedestrian is in the opposite half of the roadway and is not in danger.

(2) When a vehicle is stopped at a marked crosswalk or at an unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear may not overtake and pass the stopped vehicle.

(3) It is unlawful for any person to drive a motor vehicle through a column of school children crossing a street or highway or past a member of the school safety patrol while the member of the school safety patrol is directing the movement of children across a street or highway and while the school safety patrol member is holding an official signal in the stop position.

History: **En. Sec. 74, Ch. 263, L. 1955; amd. Sec. 1, Ch. 54, L. 1965; R.C.M. 1947, 32-2177; amd. Sec. 1, Ch. 484, L. 1993.**

Cross-References

School safety patrols, 20-1-408.
Crosswalk defined, 61-1-209.
Right-of-way defined, 61-1-406.
When overtaking on right permitted, 61-8-324.

61-8-503. Crossing at other than crosswalks. (1) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

(2) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

(3) Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

History: **En. Sec. 75, Ch. 263, L. 1955; R.C.M. 1947, 32-2178.**

Cross-References

Crosswalk defined, 61-1-209.
Intersection defined, 61-1-212.
Traffic-control signal defined, 61-1-402.
Right-of-way defined, 61-1-406.

61-8-504. Drivers to exercise due care. Notwithstanding the foregoing provisions of this part, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian or with any person operating a bicycle upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.

History: En. Sec. 76, Ch. 263, L. 1955; R.C.M. 1947, 32-2179; amd. Sec. 8, Ch. 450, L. 1983.

Cross-References

Bicycle defined, 61-1-123.

Horns and warning devices, 61-9-401.

61-8-505. Pedestrians to use right half of crosswalk. Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

History: En. Sec. 77, Ch. 263, L. 1955; R.C.M. 1947, 32-2180.

Cross-References

Crosswalk defined, 61-1-209.

61-8-506. Pedestrians on roadways. (1) Where sidewalks are provided, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.

(2) Where sidewalks are not provided, any pedestrian walking along and upon a highway shall, when practicable, walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction.

History: En. Sec. 78, Ch. 263, L. 1955; R.C.M. 1947, 32-2181.

Cross-References

Roadway defined, 61-1-206.

Sidewalk defined, 61-1-208.

61-8-507. Pedestrian soliciting rides or business. (1) No person shall stand in a roadway for the purpose of soliciting a ride, employment, or business from the occupant of any vehicle.

(2) No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.

History: En. Sec. 79, Ch. 263, L. 1955; R.C.M. 1947, 32-2182.

61-8-508. Intoxicated pedestrian. No person shall walk upon or along the highway while under the influence of intoxicating liquor.

History: En. Sec. 80, Ch. 263, L. 1955; R.C.M. 1947, 32-2183.

Cross-References

Intoxication — criminal laws limitation, 53-24-106.

Public intoxication not criminal offense, 53-24-107.

61-8-509. Pedestrian's right-of-way on sidewalks. The driver of a vehicle crossing a sidewalk shall yield the right-of-way to any pedestrian and all other traffic on the sidewalk.

History: En. Sec. 12, Ch. 450, L. 1983.

Cross-References

Sidewalk defined 61-1-208.

Right-of-way defined, 61-1-406.

Part 6

Bicycle Traffic

Part Cross-References

Footpaths and bicycle trails, Title 60, ch. 3, part 3.

Bicycle defined, 61-1-123.

61-8-601. Effect of regulations. (1) It is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this part.

(2) These regulations applicable to bicycles shall apply whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein.

History: En. Sec. 81, Ch. 263, L. 1955; R.C.M. 1947, 32-2184.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

61-8-602. Traffic laws applicable to persons operating bicycles. Every person operating a bicycle shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of any other vehicle by chapter 7, this chapter, and chapter 9 except as to special regulations in this part and except as to those provisions of chapter 7, this chapter, and chapter 9 which by their very nature can have no application.

History: En. Sec. 82, Ch. 263, L. 1955; R.C.M. 1947, 32-2185; amd. Sec. 9, Ch. 450, L. 1983.

61-8-603. Riding on bicycles. A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.

History: En. Sec. 83, Ch. 263, L. 1955; R.C.M. 1947, 32-2186.

61-8-604. Clinging to vehicles. No person riding upon any bicycle, coaster, roller skates, sled, or toy vehicle shall attach the same or himself to any vehicle upon a roadway, but a bicycle trailer or bicycle semitrailer may be attached to a bicycle if that trailer or semitrailer has been designed for such attachment.

History: En. Sec. 84, Ch. 263, L. 1955; R.C.M. 1947, 32-2187; amd. Sec. 10, Ch. 450, L. 1983.

61-8-605. Riding on roadways. (1) As used in this section, "roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, including the paved shoulder.

(2) A person operating a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing shall ride as near to the right side of the roadway as practicable except when:

(a) overtaking and passing another vehicle proceeding in the same direction;

(b) preparing for a left turn at an intersection or into a private road or driveway; or

(c) necessary to avoid a condition that makes it unsafe to continue along the right side of the roadway, including but not limited to a fixed or moving object, parked or moving vehicle, pedestrian, animal, surface hazard, or a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane.

(3) A person operating a bicycle upon a one-way highway with two or more marked traffic lanes may ride as close to the left side of the roadway as practicable.

(4) Persons riding bicycles upon a roadway shall ride in single file except when:

(a) riding on paths or parts of roadways set aside for the exclusive use of bicycles;

(b) overtaking and passing another bicycle;

(c) riding on a paved shoulder or in a parking lane, in which case the persons may ride two abreast; or

(d) riding within a single lane on a laned roadway with at least two lanes in each direction, in which case the persons may ride two abreast if they do not impede the normal and reasonable movement of traffic more than they would otherwise impede traffic by riding single file and in accordance with the provisions of this chapter.

(5) A bicycle, as defined in 61-1-123(2), is excluded from the provisions of subsections (2) and (3).

History: En. Sec. 85, Ch. 263, L. 1955; amd. Sec. 1, Ch. 110, L. 1975; R.C.M. 1947, 32-2188; amd. Sec. 8, Ch. 508, L. 1979; amd. Sec. 11, Ch. 450, L. 1983; amd. Sec. 2, Ch. 169, L. 1991.

Cross-References

Roadway defined, 61-1-206.

Bicycle turn procedures at intersection, 61-8-333.

61-8-606. Carrying articles. No person operating a bicycle shall carry any package, bundle, or article which prevents the driver from keeping at least one hand upon the handle bars.

History: En. Sec. 86, Ch. 263, L. 1955; R.C.M. 1947, 32-2189.

61-8-607. Lamps and other equipment on bicycles. (1) Every bicycle when in use at nighttime shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least 500 feet to the front. A lamp emitting a red light visible from a distance of 500 feet to the rear may be used in addition to rear-facing reflectors required by this section.

(2) Every bicycle when in use at nighttime shall be equipped with an essentially colorless front-facing reflector, essentially colorless or amber pedal reflectors, and a red rear-facing reflector. Pedal reflectors shall be mounted on the front and back of each pedal.

(3) Every bicycle when in use at nighttime shall be equipped with either tires with retroflective sidewalls or reflectors mounted on the spokes of each wheel. Spoke mounted reflectors shall be within 76 millimeters (3 inches) of the inside of the rim and shall be visible on each side of the wheel. The reflectors on the front wheel shall be essentially colorless or amber and the reflectors on the rear wheel shall be amber or red.

(4) Reflectors required by this section shall be of a type approved by the department.

(5) Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level, clean pavement.

(6) Every bicycle is encouraged to be equipped with a flag clearly visible from the rear and suspended not less than 6 feet above the roadway when the bicycle is standing upright. The flag shall be fluorescent orange in color.

History: En. Sec. 87, Ch. 263, L. 1955; amd. Sec. 1, Ch. 351, L. 1975; R.C.M. 1947, 32-2190; amd. Sec. 1, Ch. 503, L. 1985.

61-8-608. Bicycles on sidewalks. (1) A person operating a bicycle upon and along a sidewalk or across a roadway upon and along a crosswalk shall yield the right-of-way to any pedestrian and shall give audible signal before overtaking and passing any pedestrian.

(2) A person may not ride a bicycle upon and along a sidewalk or across a roadway upon and along a crosswalk where the use of a bicycle is prohibited by official traffic-control devices.

(3) Except as provided in subsections (1) and (2), a person operating a vehicle by human power upon and along a sidewalk or across a roadway upon and along a crosswalk has all the rights and duties applicable to a pedestrian under the same circumstances.

History: **En. Sec. 13, Ch. 450, L. 1983.**

Cross-References

Sidewalk defined, 61-1-208.

61-8-609. Bicycle racing — when lawful. (1) Bicycle racing on a highway is prohibited except as authorized in this section.

(2) Bicycle racing on a highway is lawful when a racing event is approved by state or local authorities on any highway under their respective jurisdictions. Approval of bicycle highway racing events will be granted only under conditions that assure reasonable safety for all race participants, spectators, and other highway users and that prevent unreasonable interference with traffic flow.

(3) By agreement with the approving authority, participants in an approved bicycle highway racing event may be exempted from compliance with any traffic laws otherwise applicable if traffic control is adequate to assure the safety of all highway users.

History: **En. Sec. 1, Ch. 75, L. 1987.**

Part 7

Enforcement — Penalties

61-8-701. Charging violations. In every charge of a violation of any speed regulation in this chapter the complaint, and also the summons or notice to appear shall specify the speed at which the defendant is alleged to have driven, also the speed applicable within the district or at the location.

History: **En. Sec. 47, Ch. 263, L. 1955; R.C.M. 1947, 32-2150.**

Cross-References

Issuance of arrest warrant upon complaint, 46-6-201.

Summons, Title 46, ch. 6, part 3.

Speed restrictions — basic rule, 61-8-303.

61-8-702. Use of radar — evidence admissible. The speed of any motor vehicle may be measured by the use of radio microwaves or other electrical device. The results of such measurements shall be accepted as evidence of the speed of such motor vehicle in any court or legal proceedings where the speed of the motor vehicle is at issue.

History: **En. Sec. 1, Ch. 120, L. 1959; R.C.M. 1947, 32-2150.1.**

Cross-References

Admissibility of evidence, Rules 104 and 105, M.R.Ev. (see Title 26, ch. 10).

61-8-703. Arrest without a warrant in radar cases. (1) The driver of any such motor vehicle may be arrested without a warrant under this section provided the arresting officer is in uniform or displays his badge of authority and has either:

(a) observed the recording of the speed of the vehicle by radio microwaves or other electrical device; or

(b) received, from the officer who has observed the speed of the vehicle recorded by the radio microwaves or other electrical device, a radio message giving the license number or other sufficient identification of the vehicle and the recorded speed, dispatched immediately after the speed of the vehicle was recorded.

(2) The arrest without a warrant of any such driver must be made immediately after such observation or radio message and as the result of uninterrupted pursuit.

History: En. Sec. 2, Ch. 120, L. 1959; R.C.M. 1947, 32-2150.2.

Cross-References

Highway patrol — procedure for arrests, Title 44, ch. 1, part 11.

Circumstances in which peace officer may make arrest, 46-6-210.

Manner of arrest without warrant, 46-6-312.

61-8-704. Erection of signs. (1) No operator of a motor vehicle may be arrested under 61-8-703 unless signs have been placed at or near the state line on the primary highway system, outside towns or cities having over 2,500 population, and outside county seats on the primary highways to indicate the legal rate of speed.

(2) Any municipality which uses radio microwaves or other electrical device for law enforcement purposes shall erect and maintain appropriate signs giving notice of such use at a conspicuous place at or near the corporate limits of the municipality, upon each state highway and arterial street or highway entering the municipality, and at such other places as may be deemed necessary by the municipal authorities for the information of the traveling public.

(3) Signs giving notice that the speed of vehicles may be measured by radio microwaves or other electrical device shall be placed as required for speed signs in subsection (1) above. However, the absence of such signs shall not in itself invalidate an otherwise proper arrest.

History: En. Sec. 3, Ch. 120, L. 1959; amd. Sec. 1, Ch. 205, L. 1974; R.C.M. 1947, 32-2150.3.

Cross-References

Department of Transportation to sign all state highways, 61-8-203.

When local authorities may and shall alter limits, 61-8-310.

61-8-705. Officers or highway patrol officers authorized to remove illegally stopped vehicles. (1) Whenever any police officer or highway patrol officer finds a vehicle standing upon a highway in violation of any of the provisions of 61-8-353 through 61-8-355, such officer or highway patrol officer is hereby authorized to move such vehicle or require the driver or other person in charge of the vehicle to move the same to a position off the paved or main-traveled part of such highway.

(2) Whenever any police officer or highway patrol officer finds a vehicle unattended upon any bridge or roadway or in any tunnel where such vehicle constitutes an obstruction to traffic, such officer or highway patrol officer is hereby authorized to provide for the removal of such vehicle pursuant to Title 61, chapter 12, part 4, except that the time limits imposed in 61-12-401 do not apply to removal under this subsection.

History: **En. Sec. 97, Ch. 263, L. 1955; R.C.M. 1947, 32-21-100; amd. Sec. 1, Ch. 71, L. 1981; amd. Sec. 1, Ch. 217, L. 1989.**

Cross-References

Prohibition against parking or leaving vehicles on public property, 61-8-356.

61-8-706. Removal of unauthorized sign. (1) An unauthorized sign, emblem, marker, or traffic-control device or portion thereof encroaching into, over, or upon a right-of-way of a state highway or controlled-access highway is a public nuisance, and the department may remove it or cause it to be removed without notice and without liability for the removal.

(2) Every sign, signal, or marking prohibited by 61-8-210 is hereby declared to be a public nuisance and the authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice.

History: **(1)En. Sec. 31, Ch. 263, L. 1955; amd. Sec. 1, Ch. 224, L. 1959; amd. Sec. 53, Ch. 316, L. 1974; Sec. 32-2134, R.C.M. 1947; (2)En. Sec. 37, Ch. 263, L. 1955; Sec. 32-2140, R.C.M. 1947; R.C.M. 1947, 32-2134(f), 32-2140(e).**

Cross-References

Public nuisances, Title 27, ch. 30, part 2.

Highway encroachments, Title 60, ch. 6.

Display of unauthorized signs, signals, or markings, 61-8-210.

61-8-707 through 61-8-710 reserved.

61-8-711. Violation of chapter — penalty. (1) It is a misdemeanor for a person to violate any of the provisions of this chapter unless the violation is declared to be a felony.

(2) Each person convicted of a misdemeanor for a violation of any of the provisions of this chapter for which another penalty is not provided shall for a first conviction be punished by a fine of not less than $10 or more than $100. For a second conviction within 1 year after the first conviction, the person shall be punished by a fine of not less than $25 or more than $200. Upon a third or subsequent conviction within 1 year after the first conviction, the person shall be punished by a fine of not less than $50 or more than $500.

(3) Except as provided in subsection (4), failure to pay a fine imposed under this chapter is a civil contempt of the court. On failure of payment of a fine, the court may:

(a) order enforcement of the fine by execution in the manner provided in 25-13-204 and under the provisions of Title 25, chapter 13; or

(b) if the court finds that the person is unable to pay, order the person to perform community service.

(4) If property is not found in an amount necessary to satisfy the unpaid portion of the fine and if the court makes a written finding that community service is inappropriate, the person shall be imprisoned in the county jail in the county in which the offense was committed, and the imprisonment shall be the number of days that the fine is divisible by the dollar amount of the incarceration credit contained in 46-18-403.

(5) Upon conviction, the court costs or any part of the court costs may be assessed against the defendant in the discretion of the court.

History: **En. Sec. 154, Ch. 263, L. 1955; R.C.M. 1947, 32-21-157; amd. Sec. 70, Ch. 421, L. 1979; amd. Sec. 1, Ch. 128, L. 1987; amd. Sec. 1, Ch. 109, L. 1991; amd. Sec. 1, Ch. 134, L. 1995.**

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Payment of costs by defendant, 46-18-232.

Execution of fine, 46-19-102.

Putting refuse on highway prohibited, 61-8-365.

61-8-712. Penalty for erection of unauthorized sign. The erection of a sign, emblem, marker, or traffic-control device in violation of 61-8-203 is a misdemeanor, punishable by a fine of not less than $25 or more than $300.

History: **En. Sec. 31, Ch. 263, L. 1955; amd. Sec. 1, Ch. 224, L. 1959; amd. Sec. 53, Ch. 316, L. 1974; R.C.M. 1947, 32-2134(e).**

Cross-References

Department of Transportation to sign all state highways, 61-8-203.

61-8-713. Injury to or removal of sign or marker a misdemeanor — penalty. (1) Every person who maliciously injures, defaces, damages, or removes any sign, signal, or marker, either temporarily or permanently erected on the right-of-way of any secondary, state, or interstate highway for warning, instruction, or information of the public, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of $250 or by imprisonment in the county jail for a period not exceeding 60 days or by both such fine and imprisonment in the discretion of the court. This section applies to secondary, state, or interstate highways which are completed and to secondary, state, or interstate highways which are under construction or repair.

(2) No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down, or remove any official traffic-control device or any railroad sign or signal or any inscription, shield, or insignia thereon or any part thereof.

History: **(1)En. Sec. 1, Ch. 184, L. 1965; Sec. 32-2134.1, R.C.M. 1947; (2)En. Sec. 38, Ch. 263, L. 1955; Sec. 32-2141, R.C.M. 1947; R.C.M. 1947, 32-2134.1, 32-2141.**

Cross-References

Criminal mischief, 45-6-101.

Classification — highways and roads, 60-1-201.

Official traffic-control devices defined, 61-1-403.

Railroad sign or signal defined, 61-1-404.

Reward for information on injury to or removal of sign or marker, 61-8-204.

Posting of penalties along highways, 61-8-205.

61-8-714. Penalty for driving under influence of alcohol or drugs — first through third offense. (1) A person convicted of a violation of 61-8-401 shall be punished by imprisonment for not less than 24 consecutive hours or more than 6 months and shall be punished by a fine of not less than $100 or more than $500. The initial 24 hours of the imprisonment term must be served in the county jail and may not be served under home arrest. The mandatory imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being. Except for the initial 24 hours of the imprisonment term, the imprisonment sentence may be suspended for a period of up to 6 months pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the defendant.

(2) On a second conviction, the person shall be punished by a fine of not less than $300 or more than $500 and by imprisonment for not less than 7 days or more than 6 months. At least 48 hours of the imprisonment term must be served consecutively in the county jail and may not be served under home

arrest. Three days of the imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being. Except for the initial 3 days of the imprisonment term, the imprisonment sentence may be suspended for a period of up to 6 months pending successful completion of a chemical dependency treatment program by the defendant.

(3) On the third conviction, the person shall be punished by imprisonment for a term of not less than 30 days or more than 1 year and by a fine of not less than $500 or more than $1,000. At least 48 hours of the imprisonment term must be served consecutively in the county jail and may not be served under home arrest. The imposition or execution of the first 10 days of the imprisonment sentence may not be suspended. The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the defendant.

History: En. Sec. 39, Ch. 263, L. 1955; amd. Sec. 1, Ch. 194, L. 1957; amd. Sec. 3, Ch. 201, L. 1957; amd. Sec. 1, Ch. 109, L. 1961; amd. Sec. 1, Ch. 132, L. 1971; amd. Sec. 1, Ch. 289, L. 1977; amd. Sec. 1, Ch. 430, L. 1977; R.C.M. 1947, 32-2142(3), (4); amd. Sec. 1, Ch. 56, L. 1979; amd. Sec. 1, Ch. 301, L. 1979; amd. Sec. 1, Ch. 451, L. 1981; amd. Sec. 1, Ch. 433, L. 1983; amd. Sec. 1, Ch. 242, L. 1985; amd. Sec. 2, Ch. 476, L. 1989; amd. Sec. 1, Ch. 101, L. 1991; amd. Sec. 1, Ch. 102, L. 1991; amd. Sec. 11, Ch. 105, L. 1991; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 7, Ch. 789, L. 1991; amd. Sec. 1, Ch. 474, L. 1993; amd. Sec. 8, Ch. 447, L. 1995; amd. Sec. 517, Ch. 546, L. 1995; amd. Sec. 1, Ch. 567, L. 1995; amd. Sec. 1, Ch. 512, L. 1997; amd. Sec. 6, Ch. 525, L. 1997; amd. Sec. 3, Ch. 455, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 455 in (1) in first sentence after "more than" substituted "6 months" for "60 days", at beginning of third sentence after "The" inserted "mandatory", and inserted fourth sentence regarding suspension of part of a sentence pending completion of court-ordered assessment, education, or treatment; in (2) inserted fourth sentence regarding suspension of part of a sentence pending completion of treatment; and in (3) inserted fourth sentence regarding suspension of part of a sentence pending completion of treatment. Amendment effective October 1, 1999.

Cross-References

Certification of chemical dependency counselors, Title 37, ch. 35.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Responsibility — intoxicated or drugged condition, 45-2-203.

Form of sentence, Title 46, ch. 18, part 2.

Criminal laws limitation, 53-24-106.

Powers and duties of Department — instructors and courses concerning chemical dependency program, 53-24-204.

Treatment of alcoholics and intoxicated persons, Title 53, ch. 24, part 3.

Driver improvement program, Title 61, ch. 2, part 3.

Persons under influence of alcohol or drugs, 61-8-401.

61-8-715. Reckless driving — reckless endangerment of highway workers — penalty. (1) A person convicted of reckless driving under 61-8-301(1)(a) or (1)(c) or convicted of reckless endangerment of highway workers under 61-8-315 shall be punished upon a first conviction by imprisonment for a period of not more than 90 days, by fine of not less than $25 or more than $300, or by both. On a second or subsequent conviction the person shall be punished by imprisonment for not less than 10 days or more than 6 months, by a fine of not less than $50 or more than $500, or by both.

(2) A person convicted of reckless driving under 61-8-301(1)(b) shall be punished by imprisonment in the county or city jail for not less than 10 days or more than 6 months to which may be added, at the discretion of the court,

a fine of not less than $300 or more than $500. On a second or subsequent conviction, the person shall be punished by imprisonment for a term of not less than 30 days or more than 1 year to which may be added at the discretion of the court a fine of not less than $500 or more than $1,000.

History: En. Sec. 40, Ch. 263, L. 1955; amd. Sec. 4, Ch. 201, L. 1957; amd. Sec. 1, Ch. 287, L. 1977; R.C.M. 1947, 32-2143(2), (3); amd. Sec. 3, Ch. 221, L. 1985; amd. Sec. 4, Ch. 473, L. 1997.

Cross-References

Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.
Reckless driving, 61-8-301.

61-8-716. Careless driving — penalty. A person violating the provisions of 61-8-302 is guilty of the offense of careless driving and shall be punishable as provided in 61-8-711.

History: En. 32-2143.4 by Sec. 2, Ch. 294, L. 1977; R.C.M. 1947, 32-2143.4.

Cross-References

Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.

61-8-717. Penalty for unauthorized drag racing. Any person convicted for violation of 61-8-308 shall be guilty of a misdemeanor and shall be punished by a fine of not less than $50 or more than $500 or by imprisonment in the county or city jail for not more than 6 months or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 100, L. 1967; R.C.M. 1947, 32-2143.2.

Cross-References

Permission of authorities to hold speed contest, 61-8-308.

61-8-718. Repealed. Sec. 10, Ch. 43, L. 1999.

History: En. 32-2144.6 by Sec. 6, Ch. 60, L. 1974; amd. Sec. 1, Ch. 248, L. 1974; amd. Sec. 1, Ch. 6, L. 1975; R.C.M. 1947, 32-2144.6(1); amd. Sec. 71, Ch. 421, L. 1979; amd. Sec. 3, Ch. 681, L. 1983; amd. Sec. 38, Ch. 557, L. 1987.

61-8-719. Penalty for leaving vehicle on public property. Any person or persons violating the provisions of 61-8-356 shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $25 or more than $300 or by imprisonment in the county jail for not less than 5 days or more than 90 days or by both fine and imprisonment.

History: En. Sec. 9, Ch. 288, L. 1967; R.C.M. 1947, 53-909(part).

Cross-References

Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.
Removal and sale of abandoned vehicles, Title 61, ch. 12, part 4.

61-8-720. Controlled access violation — penalty. A person who violates any of the provisions of 61-8-331(2) is guilty of a misdemeanor. Upon arrest and conviction, the person shall be punished by a fine of not less than $5 or more than $100.

History: En. Sec. 10-111, Ch. 197, L. 1965; R.C.M. 1947, 32-4311(2); amd. Sec. 2, Ch. 134, L. 1995.

61-8-721. Repealed. Sec. 99, Ch. 421, L. 1979.

History: En. 75-7007 by Sec. 284, Ch. 5, L. 1971; R.C.M. 1947, 75-7007(part).

61-8-722. Penalty for driving with excessive alcohol concentration — first through third offense. (1) A person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than $100 or more than $500.

(2) On a second conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than 48 consecutive hours, to be served in the county jail and not on home arrest, or more than 30 days and by a fine of not less than $300 or more than $500.

(3) On a third conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than 48 consecutive hours, to be served in the county jail and not on home arrest, or more than 6 months and by a fine of not less than $500 or more than $1,000.

History: En. Sec. 11, Ch. 698, L. 1983; amd. Sec. 2, Ch. 242, L. 1985; amd. Sec. 2, Ch. 101, L. 1991; amd. Sec. 12, Ch. 105, L. 1991; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 8, Ch. 789, L. 1991; amd. Sec. 2, Ch. 474, L. 1993; amd. Sec. 9, Ch. 447, L. 1995; amd. Sec. 518, Ch. 546, L. 1995; amd. Sec. 2, Ch. 567, L. 1995; amd. Sec. 255, Ch. 42, L. 1997; amd. Sec. 2, Ch. 512, L. 1997; amd. Sec. 7, Ch. 525, L. 1997.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Powers and duties of Department — instructors and courses concerning chemical dependency program, 53-24-204.

Treatment of alcoholics and intoxicated persons, Title 53, ch. 24, part 3.

Driver improvement program, Title 61, ch. 2, part 3.

61-8-723. Offenses committed by persons under the age of eighteen. A person under 18 years of age who is convicted of an offense under this title shall not be punished by incarceration, but shall be punished by:

(1) a fine not to exceed the fine that could be imposed on him if he were an adult, provided that such person may not be imprisoned for failure to pay such fine;

(2) revocation of his driver's license by the court or suspension of the license for a period set by the court;

(3) impoundment by a law enforcement officer designated by the court of the motor vehicle operated by the person for a period of time not exceeding 60 days if the court finds that he either owns the vehicle or is the only person who uses the vehicle; or

(4) any combination of subsections (1) through (3).

History: En. Sec. 1, Ch. 484, L. 1987.

Cross-References

Operation of vehicle by person under 21 with alcohol concentration of 0.02 or more, 61-8-410.

61-8-724. No-passing zone violation — penalty. A person convicted of a violation of 61-8-326 shall be punished upon conviction by imprisonment for a period of not more than 6 months or by a fine of not less than $50 or more than $500 or by both fine and imprisonment.

History: En. Sec. 1, Ch. 334, L. 1995.

61-8-725. Penalty for violation of speed limits — no record for certain violations. (1) A person violating the speed limit imposed pursuant to 61-8-303 shall be fined in accordance with the following schedule:

Amount of Fine	MPH in Excess of Speed Limit
$ 20	1 - 10 (daytime)
20	1 - 10 (nighttime)
40	11 - 20
70	21 - 30
100	31+

(2) A violation of a speed limit imposed pursuant to 61-8-303 is not a criminal offense within the meaning of 3-1-317, 45-2-101, 46-18-236, 61-8-104, and 61-8-711 and may not be recorded or charged against a driver's record, and an insurance company may not hold a violation of a speed limit against the insured or increase premiums because of the violation if the speed limit is exceeded by no more than:

(a) 10 miles an hour during the daytime; or

(b) 5 miles an hour during the nighttime.

(3) The surcharge provided for in 3-1-317 may not be imposed for a violation of 61-8-303.

History: En. Sec. 3, Ch. 43, L. 1999; amd. Sec. 1, Ch. 4, Sp. L. June 1999.

Compiler's Comments

Effective Date: Section 11, Ch. 43, L. 1999, provided: "[This act] is effective May 28, 1999."

1999 Special Session Amendment: Chapter 4 in (1) at beginning deleted "Subject to subsection (2)" and after "61-8-303" deleted "is guilty of a misdemeanor and"; in (2) after "61-8-303" inserted "is not a criminal offense within the meaning of 3-1-317, 45-2-101, 46-18-236, 61-8-104, and 61-8-711 and"; inserted (3) concerning exemption from surcharge in 3-1-317; and made minor changes in style. Amendment effective June 22, 1999.

61-8-726 through 61-8-730 reserved.

61-8-731. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — penalty for fourth or subsequent offense. (1) On the fourth or subsequent conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, the person is guilty of a felony and shall be punished by:

(a) imprisonment for a term of not less than 6 months or more than 13 months, for which the imposition or execution of the first 6 months may not be suspended, and during which the person is not eligible for parole;

(b) probation for a term of not less than 1 year or more than 4 years; and

(c) a fine of not less than $1,000 or more than $10,000.

(2) The court shall, subject to sentencing restrictions:

(a) specify one of the following facilities as the initial place in which the term of imprisonment must be served:

(i) a state prison;

(ii) a regional correctional facility;

(iii) a county jail;

(iv) a boot camp, provided the prior approval of the department of corrections has been obtained; or

(v) a prerelease center or, upon acceptance by the facility, a state-approved public or private treatment facility that provides the appropriate level of chemical dependency treatment, provided the prior approval of the department of corrections has been obtained; or

(b) sentence the person to the department of corrections for placement in an appropriate correctional institution or program; and

(c) order a person who is financially able to pay the costs of imprisonment, probation, and chemical dependency treatment under this section.

(3) The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include:

(a) payment of a fine as provided in 46-18-231;

(b) payment of costs as provided in 46-18-232 and 46-18-233;

(c) payment of costs of court-appointed counsel as provided in 46-8-113;

(d) community service;

(e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society;

(f) treatment in a state-approved public or private treatment facility; or

(g) any combination of the restrictions or conditions listed in subsections (3)(a) through (3)(f).

(4) (a) Following initial placement of a defendant in a boot camp, prerelease center, or treatment facility under subsection (2)(a), the department of corrections may, at its discretion, place the offender in another facility or program.

(b) The department of corrections may order all or any portion of the term of probation to be served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to probation, apply to the probation.

(5) If a violation of the restrictions or conditions of the probation is established, the court may continue the period of probation or may require the defendant to serve the remainder of the probation sentence in one of the facilities set forth in subsection (2)(a) or (2)(b). The court may credit the remainder of the probation or the time to be served in a facility set forth in subsection (2)(a) or (2)(b) with all or part of the time already served on probation.

History: En. Sec. 3, Ch. 512, L. 1997; amd. Sec. 1, Ch. 391, L. 1999; amd. Sec. 4, Ch. 455, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 391 in (1)(a) after "execution of" substituted "the first 6 months" for "which"; in (2)(a)(v) after "center" inserted "or, upon acceptance by the facility, a state-approved public or private treatment facility that provides the appropriate level of chemical dependency treatment"; in (2)(c) after "probation" inserted "and chemical dependency treatment"; in (4)(a) after "center" inserted "or treatment facility"; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 455 in (2)(c) at end deleted "and of the information course and treatment under 61-8-732". Amendment effective October 1, 1999.

Cross-References

Rates for residential community correctional program board, room, and services, 53-1-501.

Defendant to bear expense of alternative imprisonment — alcohol-related offenses, 61-8-734.

61-8-732. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — assessment, education, and treatment required. (1) In addition to the punishments provided in 61-8-714, 61-8-722, and 61-8-731, regardless of disposition, a defendant convicted of a violation of 61-8-401 or 61-8-406 shall complete:

(a) a chemical dependency assessment;

(b) a chemical dependency education course; and

(c) on a second or subsequent conviction for a violation of 61-8-401 or 61-8-406 or as required by subsection (8) of this section, chemical dependency treatment.

(2) The sentencing judge may, in the judge's discretion, require the defendant to complete the chemical dependency assessment prior to sentencing the defendant. If the assessment is not ordered or completed before sentencing, the judge shall order the chemical dependency assessment as part of the sentence.

(3) The chemical dependency assessment and the chemical dependency education course must be completed at a treatment program approved by the department of public health and human services and must be conducted by a certified chemical dependency counselor. The defendant may attend a treatment program of the defendant's choice as long as the treatment services are provided by a certified chemical dependency counselor. The defendant shall pay the cost of the assessment, the education course, and chemical dependency treatment.

(4) The assessment must describe the defendant's level of addiction, if any, and contain a recommendation as to education, treatment, or both. A defendant who disagrees with the initial assessment may, at the defendant's cost, obtain a second assessment provided by a certified chemical dependency counselor or a program approved by the department of public health and human services.

(5) The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor makes a determination as provided in this subsection, the court shall order an appropriate level of treatment based upon the determination of one of the counselors.

(6) Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a chemical dependency education course or treatment program. If the defendant fails to attend the education course or treatment program, the counselor shall notify the court of the failure.

(7) A court or counselor may not require attendance at a self-help program other than at an "open meeting", as that term is defined by the self-help program. A defendant may voluntarily participate in self-help programs.

(8) Chemical dependency treatment must be ordered for a first-time offender convicted of a violation of 61-8-401 or 61-8-406 upon a finding of chemical dependency made by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services.

(9) (a) On a second or subsequent conviction, the treatment program provided for in subsection (5) must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program.

(b) If a defendant fails to comply with the monitoring program imposed under subsection (9)(a), the court shall revoke the suspended sentence, if any, impose any remaining portion of the suspended sentence, and may include additional monthly monitoring for up to an additional 6 months.

History: En. Sec. 9, Ch. 525, L. 1997; amd. Sec. 4, Ch. 512, L. 1997; amd. Sec. 5, Ch. 455, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 455 in (1)(a) substituted "a chemical dependency assessment" for former text that read: "an alcohol information course at an alcohol treatment program approved by the department of public health and human services, which may include alcohol or drug treatment, or both"; inserted (1)(b) regarding a chemical dependency education course; inserted (1)(c) regarding chemical dependency treatment; inserted (2) allowing the sentencing judge to require the defendant to complete assessment prior to or as part of sentence; inserted (3) regarding completion of the assessment and education course; inserted (4) requiring description of the level of addiction and recommendations and providing for a second assessment if defendant disagrees with the initial assessment; deleted first sentence of former (1)(b) that read: "As long as the alcohol information course is approved as provided in this section and the treatment is provided by a certified chemical dependency counselor, the defendant may attend the information course and treatment program of the defendant's choice"; in (6) near end of first sentence after "enrolled in" substituted "a chemical dependency education" for "an alcohol information" and in second sentence after "attend the" substituted "education" for "information"; in (8) at beginning substituted "Chemical dependency treatment" for "Alcohol or drug treatment, or both"; deleted former (3)(a) that read: "(3) (a) On conviction of a second or subsequent offense under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, in addition to the punishment provided in 61-8-714 or 61-8-722, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of public health and human services, which must include alcohol or drug treatment, or both"; in (9)(b) near middle after "suspended sentence" inserted "if any"; and made minor changes in style. Amendment effective October 1, 1999.

61-8-733. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — forfeiture of vehicle. (1) On the third or subsequent conviction of a violation of 61-8-401 or 61-8-406, the court, in addition to the punishments provided in 61-8-714 and 61-8-722 and any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be seized and subjected to the procedure provided under 61-8-421.

(2) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(3) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

History: En. Sec. 10, Ch. 525, L. 1997.

61-8-734. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — conviction defined — place of imprisonment — home arrest — exceptions — deferral of sentence

not allowed. (1) (a) For the purpose of determining the number of convictions under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, "conviction" means a final conviction, as defined in 45-2-101, in this state; conviction for a violation of a similar statute or regulation in another state, or a federally recognized Indian reservation; or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state, another state, or a federally recognized Indian reservation, which forfeiture has not been vacated.

(b) An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction, unless the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used for sentencing purposes.

(c) A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401 or 61-8-406 may be counted for purposes of determining the number of a subsequent conviction for violation of either 61-8-401 or 61-8-406.

(2) Except as provided in 61-8-731, the court may order that a term of imprisonment imposed under 61-8-714 or 61-8-722 be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(3) Subject to the limitations set forth in 61-8-714 and 61-8-722 concerning minimum periods of imprisonment, the court may order that a term of imprisonment imposed under either section be served by imprisonment under home arrest, as provided in Title 46, chapter 18, part 10.

(4) A court may not defer imposition of sentence under 61-8-714, 61-8-722, or 61-8-731.

(5) The provisions of 61-2-107, 61-2-302, 61-5-205(2), and 61-5-208(2), relating to suspension and revocation of driver's licenses and later reinstatement of driving privileges, apply to any conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406.

History: En. Sec. 11, Ch. 525, L. 1997; amd. Sec. 4, Ch. 512, L. 1997.

Part 8

Commercial Motor Vehicle Safety

Part Cross-References

Commercial motor vehicle defined, 61-1-134.

Commercial driver's license defined, 61-1-135.

Licensing provisions, Title 61, ch. 5, part 1.

Revocation, suspension, or cancellation of licenses, Title 61, ch. 5, part 2.

61-8-801. Purpose. (1) The purpose of this part is to reduce the number of commercial motor vehicle accidents in Montana, to provide greater safety to the motoring public and others by establishing stringent criteria governing the operation of commercial motor vehicles, and to deny the privilege of operating commercial motor vehicles upon the public streets and highways to those commercial motor vehicle operators who are determined to be not qualified.

(2) To fulfill this purpose, the legislature intends that this part:

(a) establish criteria and procedures for the operation of commercial motor vehicles that require safety practices commensurate with the danger inherent to their operation;

(b) provide for increased administrative punishment for commercial motor vehicle operators who use alcohol while operating commercial motor vehicles;

(c) provide greater control of commercial motor vehicle operators using the streets and highways; and

(d) conform Montana's laws on commercial motor vehicle operator's endorsements with federal regulations based on the Commercial Motor Vehicle Safety Act of 1986, Public Law 99-570.

History: En. Sec. 1, Ch. 378, L. 1989.

61-8-802. Suspension of commercial driver's license — disqualification. (1) The department shall suspend the commercial driver's license of any commercial operator if the department's records or information received from federal authorities shows that the person is disqualified under federal law.

(2) A commercial driver's license suspended pursuant to this section remains suspended for the duration of the period of disqualification under federal regulations.

(3) A person whose commercial driver's license is suspended under this section due to disqualification:

(a) may appeal the suspension as provided in 61-5-211; and

(b) may not operate a commercial vehicle until the suspension is lifted and the person's commercial driver's license is restored.

History: En. Sec. 2, Ch. 378, L. 1989; amd. Sec. 27, Ch. 195, L. 1993.

61-8-803. Suspension of commercial driver's license — serious traffic violations. (1) If the department receives notice from a court or another licensing jurisdiction that a person holding a commercial driver's license has been convicted of more than one serious traffic violation in separate incidents within a 3-year period, the department shall suspend the person's commercial driver's license:

(a) for 60 days upon receipt of notice of the second conviction; or

(b) for 120 days upon receipt of notice of the third or subsequent conviction.

(2) For purposes of this section, "serious traffic violation" means conviction, when operating a commercial motor vehicle, of:

(a) speeding in excess of 15 miles an hour above a posted speed limit;

(b) reckless driving;

(c) improper or erratic traffic lane changes;

(d) following too closely; or

(e) a violation of a state law or local ordinance relating to the operation of a motor vehicle, excluding a parking, weight, or equipment violation, that arises in connection with a fatal accident.

History: En. Sec. 3, Ch. 378, L. 1989; amd. Sec. 28, Ch. 195, L. 1993; amd. Sec. 5, Ch. 105, L. 1997.

61-8-804. Suspension of commercial driver's license — felony involving a controlled substance while driving a commercial vehicle. If the department receives information that a commercial motor vehicle operator has been convicted of using a commercial motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance, as defined by federal regulations, or a felony involving possession with intent to manufacture, distribute, or dispense a controlled substance, the department shall suspend the operator's commercial driver's license for life.

History: En. Sec. 4, Ch. 378, L. 1989; amd. Sec. 29, Ch. 195, L. 1993.

61-8-805. Suspension for operating commercial vehicle with alcohol concentration of 0.04 or more — hearing. (1) A person whose alcohol concentration is 0.04 or more while the person drives or is in actual physical control of a commercial motor vehicle is subject to the suspension of the person's commercial driver's license. The peace officer who determines that the person is operating a commercial motor vehicle with an alcohol concentration of 0.04 or more shall immediately seize the person's commercial driver's license and, on behalf of the department, give the person written notice of the license suspension and the right to a hearing under 61-8-808. Upon receipt of a report certified under penalty of law from the peace officer that the person was operating a commercial motor vehicle with an alcohol concentration of 0.04 or more, the department shall suspend the license, with no provision for a restricted probationary commercial license, for:

(a) 1 year, upon receipt of the first report of a 0.04 or more alcohol concentration violation, except that if the violation occurred in a commercial motor vehicle transporting placardable hazardous materials, the suspension must be for 3 years; and

(b) life, upon receipt of a second or subsequent 0.04 or more alcohol concentration violation report at any time as determined from the records of the department, subject to federal rules allowing for driver rehabilitation and license reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension.

(2) A peace officer who determines that a commercial motor vehicle operator has a measured amount or detected presence of alcohol in the operator's body while operating a commercial motor vehicle shall place the commercial motor vehicle operator out of service as mandated by federal regulations for 24 hours.

(3) The fact that a person charged with a violation of the provisions of subsection (1) is entitled to use alcohol under the laws of Montana is not a defense against a charge of violating the provisions of subsection (1).

History: En. Sec. 5, Ch. 378, L. 1989; amd. Sec. 3, Ch. 563, L. 1991; amd. Sec. 9, Ch. 789, L. 1991; amd. Sec. 30, Ch. 195, L. 1993; amd. Sec. 9, Ch. 88, L. 1997; amd. Sec. 6, Ch. 105, L. 1997.

Cross-References

Driving under influence, 61-8-401, 61-8-406.

61-8-806. Blood and breath tests of commercial vehicle operators — procedure — suspension. (1) A person who operates a commercial motor vehicle upon the ways of this state open to the public is considered to have given consent to one or more tests of the person's blood or breath for the purpose of determining a measured amount or detected presence of alcohol in the person's body if the person is requested to submit to the test or tests by a peace officer who has reasonable grounds to believe that the person was driving or in actual physical control of a commercial motor vehicle upon the ways of this state open to the public while having a measured alcohol concentration or detected presence of alcohol. The peace officer may designate the blood or breath test or tests to be administered and may request that the person submit to a preliminary alcohol screening test before a blood, breath, or urine test is taken.

(2) A person who is unconscious or who is otherwise incapable of refusal is considered not to have withdrawn the consent provided in subsection (1).

(3) If a person refuses to submit to one or more tests designated by the officer, the test or tests may not be given, but the officer shall immediately seize the person's commercial driver's license and forward the license to the department, along with a report certified under penalty of law that the officer had reasonable grounds to believe that the person was driving or was in actual physical control of a commercial motor vehicle upon ways of this state open to the public while having a measurable alcohol concentration or detected presence of alcohol and that the person had refused to submit to one or more tests upon the request of the officer. Upon receipt of the report, the department shall suspend the license for a period provided in subsection (5).

(4) Upon seizure of a person's commercial driver's license, the peace officer shall issue, on behalf of the department, a temporary 5-day noncommercial driving permit, effective 12 hours after the time of issuance, and shall provide the person with written notice of the license suspension and the right to a hearing under 61-8-808.

(5) Upon receipt of the officer's certified report, the department shall suspend the person's commercial driver's license, with no provision for a restricted probationary commercial driver's license, for:

(a) 1 year, upon a first refusal, except that if the violation occurred in a commercial motor vehicle transporting placardable hazardous materials, the suspension for a first refusal must be for 3 years;

(b) life, upon a second or subsequent refusal at any time as determined from the records of the department, subject to federal rules allowing for driver rehabilitation and license reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension.

History: En. Sec. 6, Ch. 378, L. 1989; amd. Sec. 4, Ch. 563, L. 1991; amd. Sec. 10, Ch. 789, L. 1991; amd. Sec. 31, Ch. 195, L. 1993; amd. Sec. 8, Ch. 53, L. 1995; amd. Sec. 10, Ch. 88, L. 1997; amd. Sec. 7, Ch. 105, L. 1997.

Cross-References

Chemical tests of suspected drunk drivers, 61-8-402.

61-8-807. Administration of tests. (1) Tests required under this part must be administered as provided in 61-8-405.

(2) The department may authorize a private individual, institution, or corporation to administer required driving examinations that would otherwise

be administered by the department if they have been officially trained and certified to conduct them by the department and the third party has entered into an agreement with the department that complies with the requirements of 49 CFR part 383.75.

History: **En. Sec. 8, Ch. 378, L. 1989.**

Cross-References

Administration of chemical drunk driving tests, 61-8-405.

61-8-808. Right of appeal to court. (1) Within 30 days after notice of the suspension and the right to a hearing has been given by the peace officer under 61-8-805 or 61-8-806, the person may file a petition to challenge the suspension in the district court in the county where the finding of 0.04 or more alcohol concentration or refusal was made.

(2) The court has jurisdiction and shall set the matter for hearing. The court shall give at least 10 days' written notice to the county attorney of the county where the appeal is filed. The county attorney shall represent the state.

(3) The court shall take testimony and examine the facts of the case, except that:

(a) with regard to a suspension under 61-8-805, the issue is limited to whether the person was driving or had actual physical control of a commercial motor vehicle while the person's alcohol concentration was 0.04 or more; and

(b) with regard to a suspension under 61-8-806, the issues are limited to whether a peace officer had reasonable grounds to believe that the person had been driving or was in actual physical control of a commercial motor vehicle upon ways of this state open to the public while the person had a measurable or detectable alcohol concentration, whether the person was ordered to submit to a test, and whether the person refused to submit to the test.

(4) The court shall determine whether the petitioner is entitled to a commercial driver's license or is subject to suspension as provided in this part.

History: **En. Sec. 7, Ch. 378, L. 1989; amd. Sec. 32, Ch. 195, L. 1993; amd. Sec. 9, Ch. 53, L. 1995; amd. Sec. 8, Ch. 105, L. 1997.**

Cross-References

Appeal from suspension or revocation of driver's license for failure to take chemical drunk driving test, 61-8-403.

61-8-809. Leaving the scene of an accident involving commercial motor vehicle — suspension. Upon receipt of information that a commercial motor vehicle operator has been convicted of an offense under 61-7-103, 61-7-104, or 61-7-106 while operating a commercial motor vehicle, the department shall suspend the driver's commercial driver's license as provided in 61-8-811.

History: **En. Sec. 5, Ch. 563, L. 1991.**

61-8-810. Suspension of commercial driver's license — felony involving a commercial motor vehicle. Upon receipt of information that a commercial motor vehicle operator has been convicted of using a commercial motor vehicle in the commission of a felony, the department shall suspend the driver's commercial driver's license as provided in 61-8-811.

History: **En. Sec. 6, Ch. 563, L. 1991; amd. Sec. 33, Ch. 195, L. 1993.**

61-8-811. Suspension of commercial driver's license — duration — second or subsequent offense. Upon receiving notice pursuant to 61-5-208, 61-8-809, or 61-8-810, the department shall suspend an operator's commercial driver's license, as follows:

(1) upon notice of a first conviction, for 1 year, with no provision for a probationary license, except that if the offense occurred while operating a commercial motor vehicle transporting hazardous material, the suspension must be for 3 years;

(2) upon notice of a second conviction, as determined from the records of the department, for life, with no provision for a restricted license unless allowed by federal rules governing commercial drivers; and

(3) upon notice of a third conviction, an operator's commercial driver's license must be suspended for life and the operator is ineligible for reinstatement.

History: En. Sec. 7, Ch. 563, L. 1991; amd. Sec. 34, Ch. 195, L. 1993.

61-8-812. Suspension of commercial driver's license — operation of out-of-service vehicle. (1) Upon receipt of notice from a court of competent jurisdiction or another licensing jurisdiction that a person holding a commercial driver's license has been convicted of violating an out-of-service order, the department shall suspend the person's commercial driver's license for:

(a) 6 months for a first conviction;

(b) 1 year for a second conviction if the vehicle being operated by the person at the time of the violation was not transporting placardable hazardous materials or was not designed or being used to transport more than 15 passengers, inclusive of the driver; and

(c) 3 years:

(i) for a second conviction if the vehicle:

(A) being operated at the time of the violation was transporting placardable hazardous materials; or

(B) was designed or being used to transport more than 15 passengers, inclusive of the driver; and

(ii) for a third or subsequent conviction.

(2) For purposes of this section, an offender is considered to have been previously convicted if less than 10 years have elapsed between the commission of the present offense and a previous conviction.

(3) A temporary or probationary commercial driver's license may not be issued while a commercial driver's license is suspended under subsection (1).

History: En. Sec. 1, Ch. 195, L. 1993; amd. Sec. 9, Ch. 105, L. 1997.

Part 9
Professional Tow Trucks

Part Cross-References

Removal and sale of abandoned vehicles, Title 61, ch. 12, part 4.

61-8-901. Short title. This part may be cited as the "Montana Professional Tow Truck Act".

History: En. Sec. 1, Ch. 283, L. 1995.

61-8-902. Purpose. The legislature recognizes that:

(1) wrecked, disabled, and abandoned motor vehicles on the public roadways create hazards that imperil lives and property and require expeditious removal;

(2) officers investigating accidents on the public roadways need immediately available towing and recovery vehicles staffed by competent operators and adequately equipped to clear the roadways and remove hazardous obstructions with minimum damage to property;

(3) certain standards and classifications are needed for professional tow trucks and equipment used for towing and recovering wrecked, disabled, and abandoned motor vehicles or other objects creating hazards on the public roadways;

(4) encouragement of a competitive and qualified professional towing industry requires establishment of a uniform and equitable qualification system based on the equipment and the standards provided in 61-8-905 through 61-8-907 and a system for the fair consideration of all qualified tow truck companies; and

(5) the use of nonqualified tow truck companies or private motor vehicles to tow or recover for hire wrecked, disabled, or abandoned vehicles creates additional hazards and, except in limited situations, should be prohibited. However, when a person or tow truck company responds in good faith to life-threatening emergency situations, it should not be liable for civil damages for acts or omissions, other than damages occasioned by gross negligence or by willful or wanton acts or omissions.

History: En. Sec. 2, Ch. 283, L. 1995.

61-8-903. Definitions. As used in this part, the following definitions apply:

(1) "Commercial tow truck operator" or "operator" means a person, firm, or other entity that owns or operates a commercial tow truck as defined in 61-9-416.

(2) "Department" means the department of justice provided for in 2-15-2001.

(3) "Local government" means a county, a municipality, or other local board or body that has authority to enact laws relating to traffic.

(4) "Qualified tow truck operator" means a commercial tow truck operator:

(a) that has equipment that:

(i) meets the requirements of 61-8-906, 61-8-907, and 61-9-416; and

(ii) has been classified in accordance with 61-8-905; and

(b) that participates in the law enforcement rotation system provided for in 61-8-908.

History: En. Sec. 3, Ch. 283, L. 1995.

61-8-904. Prohibition — exception. (1) A commercial tow truck operator may not operate for compensation upon the public roadways of this state unless the operator complies with the provisions of 61-8-906(1) and 61-8-907.

(2) A commercial tow truck operator may not participate in the law enforcement rotation system provided for in 61-8-908 unless the operator complies with the provisions of 61-8-905 through 61-8-907.

(3) Sections 61-8-901 through 61-8-908 and 61-8-910 do not apply to a commercial tow truck operator that does not operate for compensation.

History: En. Sec. 4, Ch. 283, L. 1995.

61-8-905. Classification standards. (1) Commercial tow trucks are divided into the following five classes based on the manufacturer's rating:

(a) Class A tow truck equipment must have a minimum manufacturer's rating of 4 tons and must be mounted on a truck chassis with a minimum manufacturer's rating of 10,000 pounds gross vehicle weight.

(b) Class B tow truck equipment must have a minimum manufacturer's rating of 8 tons and must be mounted on a truck chassis with a minimum manufacturer's rating of 18,000 pounds gross vehicle weight.

(c) Class C tow truck equipment must have a minimum manufacturer's rating of 16 tons and must be mounted on a chassis that has a minimum manufacturer's rating of 32,000 pounds gross vehicle weight.

(d) Class D is class A, B, or C tow truck equipment that includes manufactured rollbacks and car carriers with manufacturer's gross vehicle ratings ranging from 10,000 pounds to 30,000 pounds. The rollbacks and car carriers must be mounted on a truck-trailer chassis that, at a minimum, is equal to the minimum gross weight of the rollback or car carrier.

(e) Class E includes two or more tow trucks working together with a combined manufacturer's rating of a minimum of 80,000 pounds with access to supportive equipment, such as forklifts, banders, and air bags, for the recovery of rollovers and wrecked, disabled, and abandoned vehicles whose cargo requires special handling. Class E refers to tow truck companies and not to tow truck equipment.

(2) (a) An operator of noncommercially manufactured or modified tow truck equipment in use on October 1, 1995, that wishes to participate in the law enforcement rotation system must have its equipment classified by the department within a time period set by the department. Once the equipment is classified, further modifications may not be made.

(b) (i) The department shall establish a committee composed of members selected from the:

(A) tow truck industry;

(B) the motor carrier services division of the department of transportation; and

(C) the highway patrol.

(ii) The committee is responsible for hearing disputes that may arise regarding the classification of noncommercially manufactured or modified tow truck equipment.

(iii) The department shall establish by rule a procedure for hearing a dispute.

(c) After October 1, 1995, an operator of new noncommercially manufactured or modified tow truck equipment must have its equipment independently certified before participating in the law enforcement rotation system.

History: En. Sec. 5, Ch. 283, L. 1995.

61-8-906. Liability insurance — storage requirements. (1) Notwithstanding the provisions of 61-6-301, a commercial tow truck operator shall continuously provide:

(a) insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property caused by the maintenance or use of a commercial tow truck, as defined in 61-9-416, or occurring on the business premises of a commercial tow truck operator in an amount not less than:

(i) $300,000 for class A tow trucks;

(ii) $500,000 for class B tow trucks; and

(iii) $750,000 for class C tow trucks;

(b) insurance to cover the damage to cargo or other property entrusted to the care of the commercial tow truck operator; and

(c) garage keepers legal liability insurance.

(2) A qualified tow truck operator shall provide a storage facility, either a fenced lot or a building, that is:

(a) adequate for the secure storage and safekeeping of stored vehicles;

(b) located in a place that is reasonably convenient for public access;

(c) available to public access between 8 a.m. and 5 p.m., Monday through Friday, excluding legal holidays; and

(d) large enough to store all the vehicles towed for law enforcement agencies.

History: En. Sec. 6, Ch. 283, L. 1995.

61-8-907. Inspection — fees — decal. (1) The tow truck equipment of a commercial tow truck operator must have an annual safety inspection. A highway patrol officer, an employee of the department of transportation appointed as a peace officer in accordance with 61-12-201, or an inspector certified by the department shall conduct the inspection and require the commercial tow truck operator to provide proof of compliance with the provisions of 61-8-906.

(2) (a) Upon satisfactory completion of the inspection and verification of the insurance requirements, a decal showing the last inspection date and the expiration date of the insurance coverage must be affixed in a prominent place on the tow truck.

(b) If the commercial tow truck operator is participating in the law enforcement rotation system, the decal must also show the classification of the operator's tow truck equipment.

(3) The department may establish an inspection fee that may not exceed the actual costs of the inspection. The fees must be deposited in the state highway account in the state special revenue fund.

History: En. Sec. 7, Ch. 283, L. 1995.

61-8-908. State law enforcement rotation system — local government rotation system. (1) The department shall establish an equitable rotation system among qualified tow truck operators that apply to the department in writing to be placed on the system. The rotation system:

(a) must be administered by the highway patrol in a manner that will give priority to public safety;

(b) must be based on the classification of equipment as provided in 61-8-905; and

(c) may include only qualified tow truck operators.

(2) The rotation system is not applicable when the owner or driver of a wrecked or disabled vehicle obstructing a public roadway requests a tow truck operator of the owner's or driver's choice and the operator meets the insurance requirements provided in 61-8-906 and the safety inspection requirements provided in 61-8-907.

(3) (a) (i) The law enforcement officer at the scene of the wreck shall call the qualified tow truck operator that is next on the rotation list if:

(A) a request for a tow truck is not made by the owner or driver;

(B) the requested tow truck cannot respond in a timely manner; or

(C) the law enforcement officer determines that the requested tow truck is unable to handle the wrecked or disabled vehicle.

(ii) If the qualified tow truck operator is not classified to handle the wrecked or disabled vehicle, the officer shall call the qualified tow truck operator next on the rotation list that is classified to handle the wrecked or disabled vehicle.

(b) If a qualified tow truck operator classified to handle the wrecked or disabled vehicle is not reasonably available, the law enforcement officer may request other equipment to remove the hazard.

(4) The department shall administer the state law enforcement rotation system. A qualified tow truck operator may examine the rotation system schedule established by the department in order to determine if the system is being administered in an equitable manner.

(5) A qualified tow truck operator gives implied consent to a reasonable inspection during normal business hours of its premises, vehicles, and equipment by the department of transportation, highway patrol, or a local government to ensure compliance with 61-8-905 through 61-8-907.

(6) A local law enforcement agency may adopt and administer a local law enforcement rotation system. A tow truck operator desiring to be placed on the local law enforcement rotation system must be a qualified tow truck operator as provided in this part.

History: En. Sec. 8, Ch. 283, L. 1995.

Cross-References

Designation of specific automobile body repair shops prohibited, 33-18-224.

61-8-909. Good faith immunity. A person who renders assistance in an emergency that is life-threatening to the occupant of a wrecked, disabled, or abandoned vehicle or that is creating an immediate hazard on a public roadway or who renders emergency assistance as directed by a law enforcement officer or other emergency responder at the scene of a motor vehicle accident is immune from damages arising from acts or omissions related to the rendering of assistance unless the damages are occasioned by the gross negligence or by the willful or wanton acts or omissions of the person rendering the assistance.

History: En. Sec. 9, Ch. 283, L. 1995.

61-8-910. Violation — penalty. A commercial tow truck operator that violates a provision of 61-8-906 or 61-8-907 is guilty of a misdemeanor and is subject to the penalty provided in 61-8-711.

History: En. Sec. 10, Ch. 283, L. 1995.

61-8-911. Rulemaking authority. The department shall adopt reasonable and necessary rules to administer the provisions of this part.

History: En. Sec. 11, Ch. 283, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

CHAPTER 9

VEHICLE EQUIPMENT

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Chapter Cross-References

Motor carriers safety — enforcement by highway patrol, 44-1-1005.

Vehicle Equipment Safety Compact, Title 61, ch. 2, part 2.

Joint enforcement of motor carrier safety standards by highway patrol and Department of Transportation, 61-10-141.

Part 1

General Provisions

61-9-101. Application — exceptions. (1) The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except where a different place is specifically referred to in a given section.

(2) The operation of motor vehicles directly across the public roads and highways of this state, especially as required in the transportation of natural resource products, including agricultural products and livestock, may not be considered to be the operation of the vehicles on the public roads and highways of this state. The crossings must be adequately marked with warning signs or devices relating to stopping before entry and to restoration of any damage, as may reasonably be prescribed by the state or local agency in control of safety of operation of the public highway involved.

(3) If a provision of this chapter conflicts with federal laws or regulations governing motor vehicle equipment standards, the applicable federal law or regulation supersedes.

History: (1)En. Sec. 22, Ch. 263, L. 1955; Sec. 32-2124, R.C.M. 1947; (2)En. Sec. 4, Ch. 247, L. 1959; Sec. 32-2124.1, R.C.M. 1947; R.C.M. 1947, 32-2124(part), 32-2124.1; amd. Sec. 3, Ch. 431, L. 1997.

Cross-References

Livestock on highways — flagger escorts, 60-7-204.

Highway defined, 61-1-201.

Traffic safety program, Title 61, ch. 2, part 1.

Traffic regulation — application — exceptions, 61-8-101.

61-9-102. Uniformity of interpretation. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 155, Ch. 263, L. 1955; R.C.M. 1947, 32-21-158.

61-9-103. Provisions uniform throughout state — power of local authorities. The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein and no local authority shall enact or enforce any ordinance, rule, or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this chapter.

History: En. Sec. 27, Ch. 263, L. 1955; amd. Sec. 1, Ch. 201, L. 1957; R.C.M. 1947, 32-2130.

Cross-References

Self-government powers, Art. XI, sec. 6, Mont. Const.

Municipal traffic regulations, Title 7, ch. 14, part 41.

61-9-104. Required obedience to traffic laws. It is unlawful and, unless otherwise declared in this chapter with respect to particular offenses, it is a misdemeanor punishable as provided in 61-9-511 for any person to do any act forbidden or fail to perform any act required in this chapter.

History: En. Sec. 23, Ch. 263, L. 1955; R.C.M. 1947, 32-2125; amd. Sec. 2, Ch. 40, L. 1991.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

61-9-105. Obedience to peace officers, highway patrol officers, and public safety workers. A person may not willfully fail or refuse to comply with a lawful order or direction of a peace officer, highway patrol officer, or public safety worker pertaining to the use of the highways by traffic. For purposes of this section, "public safety worker" means a person who is authorized to provide assistance at the scene of an incident that requires traffic control and who is either a member of a paid or volunteer fire department, an emergency medical service provider, a member of a search and rescue team, or a civilian accident investigator appointed by a law enforcement agency.

History: En. Sec. 24, Ch. 263, L. 1955; R.C.M. 1947, 32-2126; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 4, Ch. 431, L. 1997.

Cross-References

Highway patrol jurisdiction, Title 44, ch. 1, part 10.

Obstructing peace officer, 45-7-302.

Obstructing justice, 45-7-303.

Obedience to police officers and highway patrol officers, 61-8-105.

61-9-106. Responsibility of public officers and employees. (1) The provisions of this chapter applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this state, or any county, city, or town, district, or any other political subdivision of the state, except as provided in this section and subject to such specific exceptions as are set forth in this chapter with reference to authorized emergency vehicles.

(2) Unless specifically made applicable, the provisions of this chapter except those contained in part 5 of chapter 8 shall not apply to persons, teams, motor vehicles, and other equipment while actually engaged in work upon the surface of a highway but shall apply to such persons and vehicles when traveling to or from such work.

History: En. Sec. 25, Ch. 263, L. 1955; R.C.M. 1947, 32-2127.

Cross-References

Public-owned vehicles exempt from license or registration fees, 61-3-321.

61-9-107. Traffic laws applicable to persons driving animal-drawn vehicles. Every person driving an animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter, except those provisions of this chapter which by their very nature can have no application.

History: En. Sec. 26, Ch. 263, L. 1955; R.C.M. 1947, 32-2129.

Cross-References

Vehicle defined, 61-1-103.

Traffic laws applicable to persons driving animal-drawn vehicles, 61-8-108.

61-9-108. Rights of owners of real property not affected — when. Nothing in this chapter shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner from prohibiting such use or from requiring other or different or additional conditions than those specified in this chapter, or otherwise regulating such use as may seem best to such owner.

History: En. Sec. 29, Ch. 263, L. 1955; R.C.M. 1947, 32-2132.

Cross-References

Private road or driveway defined, 61-1-205.

Rights of owners of real property not affected — when, 61-8-109.

61-9-109. Driving vehicle in unsafe condition prohibited — applicability of chapter. (1) It is a misdemeanor for a person to drive or permit to be driven on a highway a vehicle or combination of vehicles that:

(a) is in such unsafe condition as to endanger a person;

(b) is not equipped with lamps and other equipment as required in this chapter; or

(c) is equipped in a manner in violation of this chapter.

(2) It is a misdemeanor for a person to perform an act forbidden or fail to perform an act required under this chapter.

(3) The use of additional parts and accessories on a vehicle not inconsistent with the provisions of this chapter is not prohibited.

(4) The provisions of this chapter do not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as made applicable in this chapter.

(5) All lamps and equipment required by this chapter must be maintained in proper working order and adjustment at all times.

History: En. Sec. 111, Ch. 263, L. 1955; R.C.M. 1947, 32-21-114; amd. Sec. 5, Ch. 431, L. 1997.

Cross-References

Motor carriers safety — enforcement by highway patrol, 44-1-1005.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

Farm tractor defined, 61-1-109.

Implement of husbandry defined, 61-1-121.

Part 2
Lighting Equipment

Part Cross-References

Prohibited operation of special lighting equipment on school buses, 61-8-352.

61-9-201. When lighted lamps are required. Every vehicle upon a highway within this state at any time from one-half hour after sunset to one-half hour before sunrise and at any other time when due to insufficient light or unfavorable atmospheric conditions persons and vehicles on the highway are not clearly discernible at a distance of 500 feet ahead shall display lighted lamps and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles.

History: **En. Sec. 112, Ch. 263, L. 1955; R.C.M. 1947, 32-21-115.**

Cross-References

Highway defined, 61-1-201.

Special speed limitations on trucks, truck tractors, motor-driven cycles, and vehicles towing housetrailers, 61-8-312.

Riding on motorcycles — lights on at all times, 61-8-359.

61-9-202. Visibility distance and mounted height of lamps. (1) Whenever requirement is hereinafter declared as to the distance from which certain lamps and devices shall render objects visible or within which such lamps or devices shall be visible, said provisions shall apply during the times stated in 61-9-201 in respect to a vehicle without load when upon a straight, level, unlighted highway under normal atmospheric conditions unless a different time or condition is expressly stated.

(2) Whenever requirement is hereinafter declared as to the mounted height of lamps or devices it shall mean from the center of such lamp or device to the level ground upon which the vehicle stands when such vehicle is without a load.

History: **En. Sec. 113, Ch. 263, L. 1955; R.C.M. 1947, 32-21-116.**

61-9-203. Headlamps on motor vehicles. (1) A motor vehicle other than a motorcycle, quadricycle, or motor-driven cycle must be equipped with at least two headlamps, with at least one on each side of the front of the motor vehicle, that comply with the requirements and limitations set forth in this chapter.

(2) A motorcycle, quadricycle, or motor-driven cycle must be equipped with at least one and not more than two headlamps that comply with the requirements and limitations of this chapter. If a motorcycle is registered under 61-3-411 as a collector's item, it need not be equipped with headlamps; however, if it is not equipped with headlamps, it may not be operated upon a highway or street from one-half hour after sunset to one-half hour before sunrise or if persons and vehicles are not clearly discernible at a distance of 500 feet. A motorcycle may be equipped with a means of modulating the high beam of its headlamps between high and low beam at a rate of 200 to 280 flashes a minute; however, an operator may not modulate the headlamps at that rate during periods when headlamps are required to be lighted by 61-9-201.

(3) A headlamp upon a motor vehicle, including a motorcycle, quadricycle, and motor-driven cycle, must be located at a height, measured from the center of the headlamp, of not more than 54 inches or less than 22 inches, to be measured as provided in 61-9-202(2).

(4) When headlamps are required to be lighted by 61-9-201, a person may not operate a motor vehicle on a highway with headlamps that are composed of, covered by, or treated with a tinted or colored material, substance, system, or component that obscures the headlamps or diminishes the distance of visibility required by this section.

(5) This section does not prohibit the operation or sale of a motor vehicle the headlamps of which are composed of, covered by, or treated with a tinted or colored material, substance, system, or component with which the vehicle was sold or could have been equipped for sale when new as standard or optional

equipment in compliance with federal statute or regulation governing the sale at the time of manufacture.

History: En. Sec. 114, Ch. 263, L. 1955; amd. Sec. 1, Ch. 103, L. 1957; R.C.M. 1947, 32-21-117; amd. Sec. 2, Ch. 345, L. 1983; amd. Sec. 36, Ch. 516, L. 1985; amd. Sec. 6, Ch. 431, L. 1997.

Cross-References

Motor vehicle defined, 61-1-102.
Motorcycle defined, 61-1-105.
Motor-driven cycle defined, 61-1-106.
Quadricycle defined, 61-1-133.
Riding on motorcycles, 61-8-359.

61-9-204. Taillamps. (1) A motor vehicle, trailer, semitrailer, and pole trailer and any other vehicle that is being drawn at the end of a combination of vehicles must be equipped with at least one properly functioning taillamp mounted on the rear that emits a red light plainly visible from a distance of 500 feet to the rear, except that in the case of a combination of vehicles, only the taillamp on the rearmost vehicle need actually be seen from the distance specified. The vehicles mentioned in this subsection, other than a motorcycle, quadricycle, motor-driven cycle, or truck tractor, registered in this state and manufactured or assembled after January 1, 1956, must be equipped with at least two properly functioning taillamps mounted on the rear that emit a red light plainly visible from a distance of 1,000 feet to the rear of the vehicle.

(2) A taillamp upon a vehicle must be located at a height of not more than 72 inches or less than 15 inches.

(3) Either a taillamp or a separate lamp must illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear. A taillamp or taillamps, together with a separate lamp for illuminating the rear registration plate, must be lighted whenever the headlamps are lighted.

(4) Taillamps are not required on a motorcycle that is registered under 61-3-411 as a collector's item, but the motorcycle may not be operated on a highway or street from one-half hour after sunset to one-half hour before sunrise or when persons and vehicles are not clearly discernible at a distance of 500 feet unless it is equipped with the required taillamps.

(5) A person may not operate a motor vehicle on a highway with taillamps that are covered by a lens or a plastic cover or with a tinted or colored material, substance, system, or component placed on or in front of rear lamps, taillamps, license plate lamps, or rear lamp combinations that obscures the taillamps or diminishes the distance of visibility required by this section.

(6) This section does not prohibit a vehicle manufactured prior to 1960 from being equipped with a taillamp that includes within the red cover a center lens that is blue in color.

History: En. Sec. 115, Ch. 263, L. 1955; R.C.M. 1947, 32-21-118; amd. Sec. 1, Ch. 42, L. 1979; amd. Sec. 3, Ch. 345, L. 1983; amd. Sec. 1, Ch. 58, L. 1987; amd. Sec. 7, Ch. 431, L. 1997.

Cross-References

Motorcycle defined, 61-1-105.
Truck tractor defined, 61-1-108.
Trailer defined, 61-1-111.
Semitrailer defined, 61-1-112.
Pole trailer defined, 61-1-114.
Number plates, 61-3-332.
Riding on motorcycles, 61-8-359.

61-9-205. New motor vehicles to be equipped with reflectors. (1) Every new motor vehicle hereafter sold and operated upon a highway, other than a truck tractor, shall carry on the rear, either as a part of the taillamps or separately, two red reflectors, except that every motorcycle, quadricycle, and motor-driven cycle shall carry at least one reflector meeting the requirements of this section, and except that vehicles of the type mentioned in 61-9-208 shall be equipped with reflectors as required in those sections applicable thereto.

(2) Every such reflector shall be mounted on the vehicle at a height not less than 15 inches or more than 60 inches measured as set forth in 61-9-202(2) and shall be of such size and characteristics and so mounted as to be visible at night from all distances within 300 feet to 50 feet from such vehicle when directly in front of lawful upper beams of headlamps, except that visibility from a greater distance may be required of reflectors on certain types of vehicles.

History: En. Sec. 116, Ch. 263, L. 1955; R.C.M. 1947, 32-21-119; amd. Sec. 2, Ch. 42, L. 1979; amd. Sec. 37, Ch. 516, L. 1985.

Cross-References

Motor-driven cycle defined, 61-1-106.
Quadricycle defined, 61-1-133.

61-9-206. Stop lamps — when required. (1) A person may not sell a new motor vehicle in this state or drive a vehicle on the highways unless it is equipped with at least two properly functioning stop lamps. A vehicle manufactured before January 1, 1956, and all motorcycles, quadricycles, and motor-driven cycles must be equipped with at least one properly functioning stop lamp.

(2) The stop lamp or lamps on the rear of a vehicle must display a red light that is actuated upon application of the service (foot) brake and, in a vehicle manufactured or assembled on or after January 1, 1964, must be visible from a distance of not less than 300 feet to the rear in normal sunlight. In a vehicle manufactured or assembled before January 1, 1964, the stop lamp or lamps must be visible from a distance of not less than 100 feet. The stop lamp may be incorporated with one or more other rear lamps.

(3) A stop lamp may not project a glaring light.

History: En. Sec. 117, Ch. 263, L. 1955; R.C.M. 1947, 32-21-120; amd. Sec. 38, Ch. 516, L. 1985; amd. Sec. 8, Ch. 431, L. 1997.

61-9-207. Application of succeeding sections. Sections 61-9-208 through 61-9-229 apply as stated in those sections to vehicles of the type enumerated in those sections when operated upon a highway. The vehicles must be equipped as required and all lamp equipment required must be lighted at all times mentioned in 61-9-201 except that clearance and side marker lamps need not be lighted on a vehicle when operated within a municipality when there is sufficient light to render clearly discernible persons and vehicles on the highway at a distance of 1,000 feet.

History: En. Sec. 118, Ch. 263, L. 1955; R.C.M. 1947, 32-21-121; amd. Sec. 9, Ch. 431, L. 1997.

Cross-References

Truck defined, 61-1-107.
Truck tractor defined, 61-1-108.
Trailer defined, 61-1-111.
Semitrailer defined, 61-1-112.
Pole trailer defined, 61-1-114.
Bus defined, 61-1-115.

61-9-208. Additional equipment required on certain vehicles. In addition to other equipment required in this chapter, the following vehicles must be equipped as stated in this section under the conditions stated in 61-9-207:

(1) On a bus or truck there must be on the rear, two reflectors, one at each side.

(2) On a bus or truck 80 inches or more in overall width, in addition to the requirements in subsection (1):

(a) on the front, two clearance lamps, one at each side;

(b) on the rear, two clearance lamps, one at each side;

(c) on each side, two side marker lamps, one at or near the front and one at or near the rear;

(d) on each side, two reflectors, one at or near the front and one at or near the rear.

(3) On a truck tractor, on the front, two clearance lamps, one at each side.

(4) On a trailer or semitrailer having a gross weight in excess of 3,000 pounds:

(a) on the front, two clearance lamps, one at each side;

(b) on each side, two side marker lamps, one at or near the front and one at or near the rear;

(c) on each side, two reflectors, one at or near the front and one at or near the rear;

(d) on the rear, two clearance lamps, one at each side, also two reflectors, one at each side.

(5) On a pole trailer in excess of 3,000 pounds gross weight:

(a) on each side, one side marker lamp and one clearance lamp that may be in combination, to show to the front, side, and rear; and

(b) on the rear of the pole trailer or load, two reflectors, one at each side.

(6) On a trailer, semitrailer, or pole trailer weighing 3,000 pounds or less:

(a) on the front, a steel safety chain or cable that must be securely fastened to the towing unit with the minimum diameter of any portion of the chains or cables being one-fourth of an inch. A safety chain or cable may not be connected to the ball but must be connected to the hitch or other frame member of the towing vehicle to prevent the drawbar from dropping to the ground if the ball, socket, or coupler fails;

(b) on the rear, two reflectors and two stoplights, one on each side.

History: En. Sec. 119, Ch. 263, L. 1955; amd. Sec. 1, Ch. 233, L. 1959; amd. Sec. 1, Ch. 182, L. 1974; R.C.M. 1947, 32-21-122(part); amd. Sec. 10, Ch. 431, L. 1997.

61-9-209. Color of clearance lamps, side marker lamps, reflectors, and backup lamps. (1) Front clearance lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle must display or reflect an amber color.

(2) Rear clearance lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle must display or reflect a red color.

(3) All lighting devices, reflectors, and stoplights mounted on the rear of a vehicle must display or reflect a red color, except:

(a) the signal devices, as defined in 61-9-218;

(b) the light illuminating the license plate that must be a white lamp; and

(c) the light emitted by a backup lamp that must be white.

History: En. Sec. 120, Ch. 263, L. 1955; R.C.M. 1947, 32-21-123; amd. Sec. 11, Ch. 431, L. 1997.

Cross-References

Number plates, 61-3-332.

61-9-210. Mounting of reflectors, clearance lamps, and side marker lamps. (1) Reflectors when required by 61-9-208 shall be mounted at a height not less than 24 inches and not higher than 60 inches above the ground on which the vehicle stands, except that if the highest part of the permanent structure of the vehicle is less than 24 inches the reflector at such point shall be mounted as high as that part of the permanent structure will permit.

(2) The rear reflectors on a pole trailer may be mounted on each side of the bolster or load.

(3) Any required red reflector on the rear of a vehicle may be incorporated with the taillamp, but such reflector shall meet all the other reflector requirements of this chapter.

(4) Clearance lamps shall be mounted on the permanent structure of the vehicle in such a manner as to indicate its extreme width and as near the top thereof as practicable. Clearance lamps and side marker lamps may be mounted in combination provided illumination is given as required herein with reference to both.

History: En. Sec. 121, Ch. 263, L. 1955; R.C.M. 1947, 32-21-124.

Cross-References

Pole trailer defined, 61-1-114.

61-9-211. Visibility of reflectors, clearance lamps, and marker lamps. (1) Every reflector upon any vehicle referred to in 61-9-208 shall be of such size and characteristics and so maintained as to be readily visible at nighttime from all distances within 600 feet to 100 feet from the vehicle when directly in front of lawful upper beams of headlamps. Reflectors required to be mounted on the sides of the vehicle shall reflect the required color of light to the sides, and those mounted on the rear shall reflect a red color to the rear.

(2) Front and rear clearance lamps shall be capable of being seen and distinguished under normal atmospheric conditions, at the times lights are required, at a distance of 500 feet from the front and rear respectively of the vehicle.

(3) Side marker lamps shall be capable of being seen and distinguished under normal atmospheric conditions, at the times lights are required, at a distance of 500 feet from the side of the vehicle on which mounted.

History: En. Sec. 122, Ch. 263, L. 1955; R.C.M. 1947, 32-21-125.

61-9-212. Obstructed lights not required. Whenever motor and other vehicles are operated in combination during the time that lights are required, any lamp (except taillamps) need not be lighted which, by reason of its location on a vehicle of the combination, would be obscured by another vehicle of the combination, but this shall not affect the requirements that lighted clearance lamps be displayed on the front of the foremost vehicle required to have clearance lamps or that all lights required on the rear of the rearmost vehicle of any combination shall be lighted.

History: En. Sec. 123, Ch. 263, L. 1955; R.C.M. 1947, 32-21-126.

61-9-213. Lamp or flag on projecting load. (1) Whenever the load upon a vehicle extends to the rear 4 feet or more beyond the rear of the vehicle, the following lamps and reflectors must be displayed at the extreme rear end of the load, at the times specified in 61-9-201:

(a) a red lamp plainly visible from a distance of at least 500 feet to the sides and 1,000 feet to the rear and located to indicate maximum overhang; and

(b) a red reflector visible at night at all distances from 100 feet to 600 feet to the rear when directly in front of lawful lower beams of headlamps.

(2) The red lights and reflectors required under this section must be in addition to the red lights required upon a vehicle. At any other time there must be displayed at the extreme rear end of the load a red flag or cloth not less than 12 inches square, marking the extremities of the load, at each point where a lamp or reflector would otherwise be required by this section.

History: En. Sec. 124, Ch. 263, L. 1955; R.C.M. 1947, 32-21-127; amd. Sec. 12, Ch. 431, L. 1997.

61-9-214. Lamps on parked vehicles. (1) Whenever a vehicle is lawfully parked upon a street or highway during the hours between one-half hour after sunset and one-half hour before sunrise and in the event there is sufficient light to reveal any person or object within a distance of 500 feet upon such street or highway no lights need be displayed upon such parked vehicle.

(2) Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended, during the hours between one-half hour after sunset and one-half hour before sunrise and there is not sufficient light to reveal any person or object within a distance of 500 feet upon such highway, such vehicle so parked or stopped shall be equipped with one or more lamps meeting the following requirements: at least one lamp shall display a white or amber light visible from a distance of 500 feet to the front of the vehicle, and the same lamp or at least one other lamp shall display a red light visible from a distance of 500 feet to the rear of the vehicle, and the location of said lamp or lamps, shall always be such that at least one lamp or combination of lamps meeting the requirements of this section is installed as near as practicable to the side of the vehicle which is closest to passing traffic. The foregoing provisions shall not apply to a motor-driven cycle.

(3) Any lighted headlamp upon a parked vehicle shall be depressed or dimmed.

History: En. Sec. 125, Ch. 263, L. 1955; R.C.M. 1947, 32-21-128.

Cross-References

Motor-driven cycle defined, 61-1-106.

Stop, stopping, standing, and parking defined, 61-1-407.

Unattended motor vehicles, 61-8-357.

61-9-215. Lamps on farm tractors, farm equipment, and implements of husbandry. (1) A farm tractor and a self-propelled farm equipment unit or implement of husbandry not equipped with an electric lighting system must at all times mentioned in 61-9-201 be equipped with at least one lamp displaying a white light visible from a distance of not less than 500 feet to the front of the vehicle, at least one lamp displaying a red light visible from a distance of not less than 500 feet to the rear of the vehicle, and two red reflectors visible from a distance of 100 to 600 feet to the rear when illuminated by the upper beams of headlamps. The lights required in this section must be positioned so that one lamp showing to the front and one lamp or reflector showing to the rear indicates the farthest projection of the tractor, unit, or implement on the side of the road used in passing the vehicle.

(2) A combination of farm tractor and towed unit of farm equipment or implement of husbandry not equipped with an electric lighting system or an implement of husbandry being towed by a motor vehicle must at all times mentioned in 61-9-201 be equipped with the following lamps:

(a) at least one lamp mounted to indicate the extreme left projection of the combination and displaying a white light visible from a distance of not less than 500 feet to the front of the combination; and

(b) two lamps each displaying a red light visible from a distance of not less than 500 feet to the rear of the combination, or at least one lamp displaying a red light visible from a distance of not less than 500 feet to the rear of the combination and two red reflectors visible from a distance of 100 to 600 feet to the rear of the combination when illuminated by the upper beams of headlamps. The lamps or reflectors must be mounted to indicate the extreme left and right rear projections of the towed unit or implement on the highway.

(3) A farm tractor and a self-propelled unit of farm equipment or implement of husbandry equipped with an electric lighting system must at all times mentioned in 61-9-201 be equipped with two multiple-beam or single-beam headlamps meeting the requirements of 61-9-220 or 61-9-222 and two red lamps visible from a distance of not less than 500 feet to the rear, or one red lamp visible from a distance of not less than 500 feet to the rear and two red reflectors visible from a distance of 100 to 600 feet to the rear when illuminated by the upper beams of headlamps. The red lamps or reflectors must be mounted in the rear of the farm tractor or self-propelled implement of husbandry to indicate the extreme left and right projections of the vehicle on the highway.

(4) A combination of farm tractor and towed farm equipment or towed implement of husbandry equipped with an electric lighting system must at all times mentioned in 61-9-201 be equipped with the following lamps:

(a) The farm tractor element of the combination must be equipped with two single-beam or multiple-beam headlamps meeting the requirements of 61-9-220 or 61-9-222.

(b) The towed unit of farm equipment or implement of husbandry element of the combination must be equipped with two red lamps visible from a distance of not less than 500 feet to the rear or one red lamp visible from a distance of not less than 500 feet to the rear and two red reflectors visible from a distance of 100 to 600 feet to the rear when illuminated by the upper beams of headlamps. The red lamps or reflectors must be located to indicate the extreme left and right projections of the towed unit or implement on the highway.

(c) The combination must also be equipped with a lamp displaying a white or amber light, or a shade of color between white and amber, visible from a distance of not less than 500 feet to the front and a lamp displaying a red light visible from a distance of not less than 500 feet to the rear. The lamp or lamps must indicate to the front and rear the farthest projection of the combination on the side of the road used by other vehicles in passing the combination.

History: En. Sec. 126, Ch. 263, L. 1955; R.C.M. 1947, 32-21-129; amd. Sec. 13, Ch. 431, L. 1997.

Cross-References

Farm tractor defined, 61-1-109.

Implement of husbandry defined, 61-1-121.

61-9-216. Lamps on other vehicles and equipment. A vehicle, including animal-drawn vehicles and vehicles referred to in 61-9-109(4), not specifically required by the provisions of this chapter to be equipped with lamps or other lighting devices, must at all times specified in 61-9-201 be equipped with at least one lamp displaying a white light visible from a distance of not less than 1,000 feet to the front of the vehicle, and with two lamps displaying red light visible from a distance of not less than 1,000 feet to the rear of the vehicle. The vehicle may have one lamp displaying a red light visible from a distance of not less than 1,000 feet to the rear and two red reflectors visible for distances of 100 to 600 feet to the rear when illuminated by the upper beams of headlamps.

History: En. Sec. 127, Ch. 263, L. 1955; amd. Sec. 1, Ch. 247, L. 1969; R.C.M. 1947, 32-21-130(a); amd. Sec. 14, Ch. 431, L. 1997.

Cross-References

Traffic laws applicable to persons driving animal-drawn vehicles, 61-8-108, 61-9-107.

Violation of general lighting requirement and slow-moving vehicle provisions — penalty, 61-9-513.

61-9-217. Spot lamps, fog lamps, and auxiliary lamps. (1) A motor vehicle may not be equipped with more than two spot lamps and a lighted spot lamp must be turned off upon approaching another moving vehicle from either direction.

(2) A motor vehicle may not be equipped with more than two fog lamps that provide a low, wide-angle light pattern to increase short-range visibility. Fog lamps must be mounted on the front at a height not more than 30 inches above the level surface upon which the vehicle stands and so aimed that when the vehicle is not loaded none of the high-intensity portion of the light to the left of the center of the vehicle at a distance of 25 feet ahead projects higher than a level of 4 inches below the level of the center of the lamp from which it comes. Lighted fog lamps meeting the requirements of this subsection may be used with lower headlamp beams as specified in 61-9-220(2). A fog lamp may not be used as a substitute for headlamps.

(3) A motor vehicle may not be equipped with more than two auxiliary driving lamps that produce a long-range, pencil-shaped light pattern and that are used to supplement the upper beams of headlamps. Auxiliary driving lamps must be mounted on the front at a height not less than 16 inches or more than 42 inches above the level surface upon which the vehicle stands. The provisions of 61-9-220 apply to a combination of headlamps and auxiliary driving lamps. An auxiliary driving lamp may not be used as a substitute for headlamps or lighted at any time the headlamps are required to be on in the low-beam position.

(4) An auxiliary off-road lamp mounted more than 42 inches above the level surface upon which the vehicle stands may not be lighted while the vehicle is operated or parked on a highway.

History: En. Sec. 128, Ch. 263, L. 1955; amd. Sec. 1, Ch. 147, L. 1957; R.C.M. 1947, 32-21-131; amd. Sec. 15, Ch. 431, L. 1997.

61-9-218. Signal lamps and signal devices — when required. (1) A motor vehicle or combination of vehicles may be equipped and when required under this chapter must be equipped with signal lamps showing to the front and rear for the purpose of indicating an intention to turn either to the right or left. The lamps showing to the front must be located on the same level and as widely spaced laterally as practicable. Except as provided in subsection (3), when in use, the lamps must display a white or amber light, or a shade of color between white and amber, visible from a distance of not less than 300 feet to the front in normal sunlight. The lamps showing to the rear must be located at the same level and as widely spaced laterally as practicable. Except as provided in subsection (3), when in use, the lamps must display a red or amber light, or a shade of color between red and amber, visible from a distance of not less than 300 feet to the rear in normal sunlight. When actuated the lamps must indicate the intended direction of turning by flashing the lights showing to the front and rear on the side toward which the turn is made.

(2) Except as provided in subsection (3), a motor vehicle, trailer, semitrailer, or pole trailer must be equipped with signal lamps meeting the requirements of this section.

(3) On a motor vehicle manufactured or assembled before January 1, 1964, the signal lamps required by this section must be visible from a distance of not less than 100 feet. Signal lamps are not required on any vehicle manufactured or assembled before January 1, 1953.

(4) A stop lamp or signal lamp or device may not project a glaring light.

History: En. Sec. 130, Ch. 263, L. 1955; amd. Sec. 2, Ch. 105, L. 1957; R.C.M. 1947, 32-21-133; amd. Sec. 16, Ch. 431, L. 1997.

Cross-References

Turning movements and required signals, 61-8-336.

Signals by hand and arm or signal device, 61-8-337.

61-9-219. Additional lighting equipment. (1) Any motor vehicle may be equipped with not more than two side cowl or fender lamps which shall emit an amber or white light without glare.

(2) Any motor vehicle may be equipped with not more than one running board courtesy lamp on each side thereof which shall emit a white or amber light without glare.

(3) Any motor vehicle may be equipped with not more than two backup lamps either separately or in combination with other lamps, but any such backup lamps shall not be lighted when the motor vehicle is in forward motion.

(4) Any vehicle may be equipped with lamps which may be used for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking, or passing, and when so equipped may display such warning in addition to any other warning signals required by this chapter. The lamps used to display such warning to the front shall be mounted at the same level and as widely spaced laterally as practicable and shall display simultaneously flashing white or amber lights, or any shade of color between white and amber. The lamps used to display such warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable, and shall show simultaneously flashing amber or red lights, or any shade of color between amber and red. These warning lights shall be visible from a distance of not less than 500 feet under normal atmospheric conditions at night.

History: En. Sec. 131, Ch. 263, L. 1955; R.C.M. 1947, 32-21-134.

Cross-References

Vehicle width, 61-10-102.

61-9-220. Multiple-beam road-lighting equipment. Except as provided in this part, the headlamps or the auxiliary driving lamps or combination of both on a motor vehicle other than a motorcycle, quadricycle, or motor-driven cycle must be so arranged that the driver may select between distributions of light projected to different elevations. The selection can be made automatically, subject to the following limitations:

(1) There must be an uppermost distribution of light, or composite beam, capable of revealing persons and vehicles at a distance of at least 350 feet ahead for all conditions of loading.

(2) There must be a lowermost distribution of light, or composite beam, capable of revealing persons and vehicles at a distance of at least 100 feet ahead. On a straight level road under any condition of loading the high-intensity portion of the beam may not be directed to strike the eyes of an approaching driver.

(3) A motor vehicle, other than a motorcycle, quadricycle, or motor-driven cycle, manufactured after January 1, 1956, that has multiple-beam road-lighting equipment must be equipped with a beam indicator that must be lighted whenever the uppermost distribution of light from the headlamps is in use, and may not otherwise be lighted. The indicator must be readily visible without glare to the driver of the vehicle.

History: En. Sec. 132, Ch. 263, L. 1955; R.C.M. 1947, 32-21-135; amd. Sec. 39, Ch. 516, L. 1985; amd. Sec. 17, Ch. 431, L. 1997.

Cross-References

Motorcycle defined, 61-1-105.
Motor-driven cycle defined, 61-1-106.
Quadricycle defined, 61-1-133.

61-9-221. Use of multiple-beam road-lighting equipment. Whenever a motor vehicle is being operated on a roadway or shoulder adjacent to a roadway during the times specified in 61-9-201, the driver shall use a distribution of light, or composite beam, capable of revealing persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

(1) Whenever the driver of a vehicle approaches an oncoming vehicle within 1,000 feet, the driver shall use a distribution of light or composite beam that does not project into the eyes of the oncoming driver. The lowermost distribution of light specified in 61-9-220(2) must avoid glare at all times, regardless of road contour and loading.

(2) Whenever the driver of a vehicle follows another vehicle within 500 feet to the rear, the driver shall use a distribution of light permissible under this chapter other than the uppermost distribution of light specified in 61-9-220(1).

History: En. Sec. 133, Ch. 263, L. 1955; R.C.M. 1947, 32-21-136; amd. Sec. 18, Ch. 431, L. 1997.

Cross-References

Following too closely, 61-8-329.

61-9-222. Single-beam road-lighting equipment. Headlamps arranged to provide a single distribution of light shall be permitted on motor vehicles manufactured and sold prior to July 1, 1956, in lieu of multiple-beam road-lighting equipment herein specified if the single distribution of light complies with the following requirements and limitations:

(1) The headlamps shall be so aimed that when the vehicle is not loaded none of the high-intensity portion of the light shall at a distance of 25 feet ahead project higher than a level of 5 inches below the level of the center of the lamp from which it comes, and in no case higher than 42 inches above the level on which the vehicle stands at a distance of 75 feet ahead.

(2) The intensity shall be sufficient to reveal persons and vehicles at a distance of at least 200 feet.

History: En. Sec. 134, Ch. 263, L. 1955; R.C.M. 1947, 32-21-137.

61-9-223. Lighting equipment on motor-driven cycles. The headlamp or headlamps upon every motor-driven cycle may be of the single-beam or multiple-beam type but in either event shall comply with the requirements and limitations as follows:

(1) Every said headlamp or headlamps on a motor-driven cycle shall be of sufficient intensity to reveal a person or a vehicle at a distance of not less than 100 feet when the motor-driven cycle is operated at any speed less than 25 miles per hour and at a distance of not less than 200 feet when the motor-driven cycle is operated at a speed of 25 or more miles per hour, and at a distance of not less than 300 feet when the motor-driven cycle is operated at a speed of 35 or more miles per hour.

(2) In the event the motor-driven cycle is equipped with a multiple-beam headlamp or headlamps the upper beam shall meet the minimum requirements set forth above and shall not exceed the limitations set forth in 61-9-220(1) and the lowermost beam shall meet the requirements applicable to a lowermost distribution of light as set forth in 61-9-220(2).

(3) In the event the motor-driven cycle is equipped with a single-beam lamp or lamps, said lamp or lamps shall be so aimed that when the vehicle is loaded none of the high-intensity portion of light at a distance of 25 feet ahead shall project higher than the level of the center of the lamp from which it comes.

History: En. Sec. 135, Ch. 263, L. 1955; R.C.M. 1947, 32-21-138.

Cross-References

Motor-driven cycle defined, 61-1-106.

Riding on motorcycles, 61-8-359.

61-9-224. Repealed. Sec. 42, Ch. 431, L. 1997.

History: En. Sec. 136, Ch. 263, L. 1955; R.C.M. 1947, 32-21-139.

61-9-225. Number of driving lamps required or permitted. (1) At all times specified in 61-9-201, at least two lighted lamps shall be displayed, one on each side at the front of every motor vehicle other than a motorcycle, quadricycle, or motor-driven cycle, except when such vehicle is parked, subject to the regulations governing lights on parked vehicles.

(2) Whenever a motor vehicle equipped with headlamps as herein required is also equipped with any auxiliary lamps or a spot lamp or any other lamp on the front thereof projecting a beam of intensity greater than 300 candlepower, not more than a total of four of any such lamps on the front of a vehicle shall be lighted at any one time when upon a highway.

History: En. Sec. 137, Ch. 263, L. 1955; R.C.M. 1947, 32-21-140; amd. Sec. 40, Ch. 516, L. 1985.

Cross-References

Motorcycle defined, 61-1-105.

Motor-driven cycle defined, 61-1-106.

Quadricycle defined, 61-1-133.

61-9-226. Special restrictions on lamps. (1) A lighted lamp or illuminating device upon a motor vehicle other than headlamps, spot lamps, auxiliary lamps, or flashing turn signals, emergency vehicle warning lamps, and school bus warning lamps that projects a beam of light of an intensity greater than 300 candlepower must be so directed that the high intensity portion of the beam may not strike the level of the roadway on which the vehicle stands at a distance of more than 75 feet from the vehicle.

(2) A person may not drive or move a vehicle or equipment upon a highway with a lamp or device displaying a red light visible from in front of the center of the vehicle. This section does not apply to a vehicle upon which a red light visible from the front is expressly authorized or required by this code.

(3) Flashing, blinking, sequential, rotating, or pulsating lights are prohibited except on vehicles that are authorized by this chapter to contain the lights or on a vehicle as a means for indicating a right or left turn or the presence of a vehicular traffic hazard requiring unusual care in approaching, overtaking, or passing.

(4) License plate decorative lighting that is not original manufacturer's equipment or undercarriage decorative lighting that rotates, flashes, or oscillates or that displays a color authorized by this chapter for use by police vehicles and authorized emergency vehicles may not be illuminated on a vehicle that is operated upon a highway or street.

History: En. Sec. 138, Ch. 263, L. 1955; R.C.M. 1947, 32-21-141; amd. Sec. 19, Ch. 431, L. 1997.

Cross-References

School bus defined, 61-1-116.

Authorized emergency vehicles defined, 61-1-119.

61-9-227. Blinker-type or revolving red light on certain private vehicles — use — identification card. (1) Firefighters, when authorized by the chiefs of their respective departments, and search and rescue and volunteer emergency medical personnel, when authorized by the county sheriff, may use a blinker-type or revolving red light or both on the front or the top of their privately owned motor vehicles. This light must be used on emergency duty only while responding to but not upon returning from a fire or other emergency.

(2) A firefighter or search and rescue or volunteer emergency medical personnel displaying the emergency red light on a privately owned motor vehicle shall also carry on the vehicle an identification card showing the name of the owner of the vehicle and the organization to which the firefighter or search and rescue or volunteer emergency medical personnel belongs, and bearing the signature of the person authorizing the emergency use of the light.

History: En. Sec. 1, Ch. 154, L. 1957; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 32-21-141.1; amd. Sec. 1, Ch. 369, L. 1981; amd. Sec. 20, Ch. 431, L. 1997.

Cross-References

Provision for fire equipment, 7-33-4202.

Unauthorized use of firefighter's private vehicle — penalty, 61-9-514.

61-9-228. Standards for lights on snow-removal equipment. (1) The commission shall adopt standards and specifications applicable to headlamps, clearance lamps, and identification and other lamps on snow-removal equipment when operated on the highways of this state in lieu of the lamps otherwise required on motor vehicles by this chapter. Such standards and specifications may permit the use of flashing lights for purposes of identification on snow-removal equipment when in service upon the highways. The standards and specifications for lamps referred to in this section shall correlate with and so far as possible conform with those approved by the American association of state highway officials.

(2) It shall be unlawful to operate any snow-removal equipment on any highway unless the lamps thereon comply with and are lighted when and as required by the standards and specifications adopted as provided in this section.

History: En. Sec. 139, Ch. 263, L. 1955; R.C.M. 1947, 32-21-142.

Cross-References

Transportation Commission, 2-15-2502; Title 60, ch. 2, part 1.

61-9-229. Flashing amber light on mail delivery vehicle. (1) A vehicle engaged in delivery of United States mail may be equipped with a blinker-type or revolving amber light mounted on the top of the vehicle, and the light may be illuminated while the vehicle is engaged in delivery of mail.

(2) A person delivering the United States mail and illuminating an amber light on a privately owned motor vehicle shall carry attached to the motor vehicle an identification card showing the name of the owner of the vehicle and signed by the postmaster authorizing the use of the amber light.

History: En. Sec. 1, Ch. 285, L. 1987.

Cross-References

Right-of-way for military not to interfere with mail delivery, 10-1-602.

Part 3
Brakes

61-9-301. Brake equipment required. Every motor vehicle, trailer, semitrailer, and pole trailer, and any combination of such vehicles operating upon a highway within this state shall be equipped with brakes in compliance with the requirements of this part.

History: En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(part).

Cross-References

Motor vehicle defined, 61-1-102.
Trailer defined, 61-1-111.
Semitrailer defined, 61-1-112.
Pole trailer defined, 61-1-114.

61-9-302. Service brakes — adequacy. Every such vehicle and combination of vehicles, except special mobile equipment as defined in 61-1-104, shall be equipped with service brakes complying with the performance requirements of 61-9-312 and adequate to control the movement of and to stop and hold such vehicle under all conditions of loading and on any grade incident to its operation.

History: En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(a).

61-9-303. Parking brakes — adequacy. Every such vehicle and combination of vehicles, except motorcycles, quadricycles, and motor-driven cycles, shall be equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading, on a surface free from snow, ice, or loose material. The parking brakes shall be capable of being applied in conformance with the foregoing requirements by the driver's muscular effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other source of power, provided that failure of the service brake actuation system or other power assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind. The same brake drums, brake shoes and lining assemblies, brake shoe anchors and mechanical brake shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that failure of any one part shall not leave the vehicle without operative brakes.

History: En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(b); amd. Sec. 41, Ch. 516, L. 1985.

Cross-References

Motorcycle defined, 61-1-105.
Motor-driven cycle defined, 61-1-106.
Quadricycle defined, 61-1-133.

61-9-304. Brakes required on all wheels — exceptions. Every vehicle must be equipped with brakes acting on all wheels except:

(1) trailers, semitrailers, pole trailers of a gross weight not exceeding 3,000 pounds, provided that:

(a) the total weight on and including the wheels of the trailer or trailers may not exceed 40% of the gross weight of the towing vehicle when connected to the trailer or trailers; and

(b) the combination of vehicles consisting of the towing vehicle and its total towed load is capable of complying with the performance requirements of 61-9-312;

(2) any vehicle being towed in driveaway or towaway operations, provided the combination of vehicles is capable of complying with the performance requirements of 61-9-312;

(3) trucks and truck tractors having three or more axles need not have brakes on the front wheels, if the vehicle was manufactured before July 25, 1980. However, the trucks and truck tractors must be capable of complying with the performance requirements of 61-9-312.

(4) special mobile equipment as defined in 61-1-104;

(5) the wheel of a sidecar attached to a motorcycle or to a motor-driven cycle, or the front wheel of a motor-driven cycle need not be equipped with brakes. However, a quadricycle, motorcycle, or motor-driven cycle must be capable of complying with the performance requirements of 61-9-312.

History: En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(c); amd. Sec. 42, Ch. 516, L. 1985; amd. Sec. 1, Ch. 276, L. 1993.

Cross-References

Motorcycle defined, 61-1-105.
Motor-driven cycle defined, 61-1-106.
Truck defined, 61-1-107.
Truck tractor defined, 61-1-108.
Trailer defined, 61-1-111.
Semitrailer defined, 61-1-112.
Pole trailer defined, 61-1-114.
Quadricycle defined, 61-1-133.
Permit and transit plates for new vehicles being transported by driveaway or towaway methods, 61-4-301.

61-9-305. Automatic trailer brake application upon breakaway. Every trailer, semitrailer, and pole trailer equipped with air or vacuum actuated brakes and every trailer, semitrailer, and pole trailer with a gross weight in excess of 3,000 pounds, manufactured or assembled after January 1, 1966, shall be equipped with brakes acting on all wheels and of such character as to be applied automatically and promptly, and remain applied for at least 15 minutes upon breakaway from the towing vehicle.

History: En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(d).

61-9-306. Tractor brakes protected. Every motor vehicle manufactured or assembled after January 1, 1966, and used to tow a trailer, semitrailer, or pole trailer equipped with brakes shall be equipped with means for providing that in case of breakaway of the towed vehicle, the towing vehicle will be capable of being stopped by the use of its service brakes.

History: En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(e).

61-9-307. Trailer air reservoirs safeguarded. Air brake systems installed on trailers manufactured or assembled after January 1, 1966, shall be so designed that the supply reservoir used to provide air for the brakes shall be safeguarded against backflow of air from the reservoir through the supply line.

History: En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(f).

Cross-References

Trailer defined, 61-1-111.

61-9-308. Two means of emergency brake operation. (1) A towing vehicle, when used to tow another vehicle equipped with air controlled brakes, in other than driveaway or towaway operations, must be equipped with two means for emergency application of the trailer brakes. One of these means must apply the brakes automatically in the event of a reduction of the towing vehicle air supply to a fixed pressure that may not be lower than 20 pounds per square inch or higher than 45 pounds per square inch. The other means must be a manually controlled device for applying and releasing the brakes, readily operable by a person seated in the driving seat, and its emergency position or method of operation must be clearly indicated. The manual means may not be arranged to prevent operation of the automatic means. The automatic and the manual means required by this section may be separate.

(2) A towing vehicle used to tow other vehicles equipped with vacuum brakes, in operations other than driveaway or towaway operations, must have, in addition to the single control device required by 61-9-309, a second control device that can be used to operate the brakes on towed vehicles in emergencies. The second control must be independent of brake air, hydraulic, and other pressure, and independent of other controls, unless the braking system is so arranged that failure of the pressure upon which the second control depends causes the towed vehicle brakes to be applied automatically. The second control is not required to provide modulated braking.

History: En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(g); amd. Sec. 21, Ch. 431, L. 1997.

Cross-References

Truck tractor defined, 61-1-108.

Road tractor defined, 61-1-110.

61-9-309. Single control to operate all brakes. A motor vehicle, trailer, semitrailer, or pole trailer, and a combination of these vehicles, except motorcycles, quadricycles, and motor-driven cycles, equipped with brakes must have one control device that can be used to operate all service brakes. This requirement does not prohibit vehicles from being equipped with an additional control device to operate brakes on the towed vehicles. This regulation does not apply to driveaway or towaway operations unless the brakes on the individual vehicles can be operated by a single control on the towing vehicle.

History: En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(h); amd. Sec. 43, Ch. 516, L. 1985; amd. Sec. 22, Ch. 431, L. 1997.

Cross-References

Motor vehicle defined, 61-1-102.
Motorcycle defined, 61-1-105.
Motor-driven cycle defined, 61-1-106.
Trailer defined, 61-1-111.
Semitrailer defined, 61-1-112.
Pole trailer defined, 61-1-114.
Quadricycle defined, 61-1-133.

61-9-310. Reservoir capacity and check valve. (1) A bus, truck, or truck tractor with air operated brakes must be equipped with at least one reservoir sufficient to ensure that, when fully charged to the maximum pressure as regulated by the air compressor governor cutout setting, a full service brake application is made without lowering the reservoir pressure by more than 20%. Each reservoir must be provided with means for readily draining accumulated oil or water.

(2) A truck with three or more axles equipped with vacuum assistor type brakes or a truck tractor and truck used for towing a vehicle equipped with vacuum brakes must be equipped with a reserve capacity or a vacuum reservoir sufficient to ensure that, with the reserve capacity or reservoir fully charged and with the engine stopped, a full service brake application is made without depleting the vacuum supply by more than 40%.

(3) A motor vehicle, trailer, semitrailer, or pole trailer, when equipped with air or vacuum reservoirs or reserve capacity as required by this section, must have reservoirs or reserve capacity safeguarded by a check valve or equivalent device that, in the event of failure or leakage in its connection to the source of compressed air or vacuum, prevents the stored air or vacuum from being depleted by the leak or failure.

History: En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(i); amd. Sec. 23, Ch. 431, L. 1997.

Cross-References

Motor vehicle defined, 61-1-102.
Truck defined, 61-1-107.
Truck tractor defined, 61-1-108.
Trailer defined, 61-1-111.
Semitrailer defined, 61-1-112.
Pole trailer defined, 61-1-114.
Bus defined, 61-1-115.
Axle defined, 61-1-128.

61-9-311. Warning devices. (1) A bus, truck, or truck tractor using compressed air for the operation of its own brakes or the brakes on a towed vehicle must have a warning signal, other than a pressure gauge, readily audible or visible to the driver that will operate at any time the air reservoir pressure of the vehicle is below 60 pounds per square inch. In addition, each vehicle must be equipped with a pressure gauge visible to the driver that indicates in pounds per square inch the pressure available for braking.

(2) A truck tractor, truck used for towing a vehicle equipped with vacuum operated brakes, or a truck with three or more axles using vacuum in the

operation of its brakes, except those in driveaway or towaway operations, must be equipped with a warning signal, other than a gauge indicating vacuum, readily audible or visible to the driver that will operate at any time the vacuum in the vehicle's supply reservoir or reserve capacity is less than 8 inches of mercury.

(3) When a vehicle required to be equipped with a warning device is equipped with both air and vacuum power for the operation of its own brakes or the brakes on a towed vehicle, the warning devices may be combined into a single device that will serve both purposes. A gauge or gauges indicating pressure or vacuum is not an adequate means of satisfying this requirement.

History: En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(j); amd. Sec. 24, Ch. 431, L. 1997.

61-9-312. Performance ability of brakes. On a dry, hard, approximately level stretch of highway free from loose material, a motor vehicle or combination of vehicles, upon application of the service brake, must be capable of stopping at a speed of 20 miles an hour within the following distances:

(1) 25 feet for passenger motor vehicles, except buses and pioneer vehicles;

(2) 40 feet for buses, trucks, and tractor trucks;

(3) 45 feet for motor vehicles registered or qualified to be registered as pioneer vehicles under 61-3-411(3)(a) when equipped with two-wheel brakes or 25 feet when equipped with four-wheel brakes;

(4) 40 feet for all combinations of vehicles; and

(5) 30 feet for motorcycles, quadricycles, and motor-driven cycles.

History: En. Sec. 2, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.2; amd. Sec. 44, Ch. 516, L. 1985; amd. Sec. 25, Ch. 431, L. 1997.

Cross-References

Motorcycle defined, 61-1-105.

Quadricycle defined, 61-1-133.

61-9-313. Maintenance of brakes. All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle.

History: En. Sec. 3, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.3.

61-9-314. Hydraulic brake fluid. (1) The term "hydraulic brake fluid" as used in this section shall mean the liquid medium through which force is transmitted to the brakes in the hydraulic brake system of a vehicle.

(2) Hydraulic brake fluid shall be distributed and serviced with due regard for the safety of the occupants of the vehicle and the public.

(3) The department shall, after public hearing following due notice, adopt and enforce regulations for the administration of this section and shall adopt and publish standards and specifications for hydraulic brake fluid which shall correlate with, and so far as practicable conform to, the then current standards and specifications of the society of automotive engineers applicable to such fluid.

(4) No person shall distribute, have for sale, offer for sale, or sell any hydraulic brake fluid unless it complies with the requirements of this section. No person shall service any vehicle with brake fluid unless it complies with the requirements of this section.

History: En. Sec. 4, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.4; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

61-9-315. Brakes on motor-driven cycles. (1) The department is authorized to require an inspection of the brake on any motor-driven cycle and to disapprove any brake which it finds will not comply with the performance ability standard set forth in this part or which in its opinion is not designed or constructed to insure reasonable and reliable performance in actual use.

(2) The department may refuse to register or may suspend or revoke the registration of any vehicle referred to in this section when it has been determined that the brake thereon does not comply with the provisions of this section.

(3) No person may operate on any highway any vehicle referred to in this section if the department has disapproved the brake equipment upon such vehicle or type of vehicle.

History: En. Sec. 141, Ch. 263, L. 1955; R.C.M. 1947, 32-21-144; amd. Sec. 72, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Motor-driven cycle defined, 61-1-106.

Registration, Title 61, ch. 3, part 3.

Part 4
Miscellaneous Regulations

61-9-401. Horns, security alarms, and warning devices. (1) A motor vehicle when operated upon a highway must be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than 200 feet. A horn or other warning device may not emit an unreasonably loud or harsh sound or a whistle. The driver of a motor vehicle shall when reasonably necessary to ensure safe operation give audible warning with the horn but may not otherwise use the horn when upon a highway.

(2) A vehicle may not be equipped with and a person may not use upon a vehicle a siren, whistle, or bell, except as otherwise permitted in this section.

(3) A vehicle may be equipped with a security alarm signal device that cannot be used by the driver as an ordinary warning signal while the vehicle is in motion.

(4) An authorized emergency vehicle may be equipped with a siren, whistle, or bell capable of emitting sound audible under normal conditions from a distance of not less than 500 feet and of a type approved by the department. The siren may not be used except when the vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which event the driver of the vehicle shall sound the siren when reasonably necessary to warn pedestrians and other drivers of the vehicle's approach.

History: En. Sec. 142, Ch. 263, L. 1955; R.C.M. 1947, 32-21-145; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 26, Ch. 431, L. 1997.

Cross-References

Police vehicle defined, 61-1-118.

Authorized emergency vehicle defined, 61-1-119.

Police vehicles and authorized emergency vehicles, 61-8-107.

Operation of vehicles on approach of police vehicles or authorized emergency vehicles, 61-8-346.

Pedestrians — drivers to exercise due care, 61-8-504.

61-9-402. Audible and visual signals on police, emergency vehicles, and on-scene command vehicles — immunity. (1) A police vehicle must be equipped with a siren capable of giving an audible signal and may be equipped with alternately flashing or rotating red or blue lights as specified in this section. The use of signal equipment as described in this section imposes upon the drivers of other vehicles the obligation to yield right-of-way or to stop and to proceed past the signal or light only with caution and at a speed that is no greater than is reasonable and proper under the conditions existing at the point of operation.

(2) An authorized emergency vehicle must be equipped:

(a) with a siren and an alternately flashing or rotating red light as specified in this section; and

(b) with signal lamps mounted as high and as widely spaced laterally as practicable that are capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight.

(3) A bus used for the transportation of school children must be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, displaying to the front two red and two amber alternating flashing lights and to the rear two red and two amber alternating flashing lights. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight. The warning lights must be as prescribed by the board of public education and approved by the department.

(4) A police vehicle and an authorized emergency vehicle may, and an emergency service vehicle must, be equipped with alternately flashing or rotating amber lights as specified in this section.

(a) The use of signal equipment as described in this section imposes upon the drivers of other vehicles the obligation to yield right-of-way or to stop and to proceed past the signal or light only with caution and at a speed that is no greater than is reasonable and proper under the conditions existing at the point of operation subject to the provisions of 61-8-209 and 61-8-303.

(b) An employee, agent, or representative of the state or a political subdivision of the state or of a fire department who is operating a police vehicle, an authorized emergency vehicle, or an emergency service vehicle and using signal equipment in rendering assistance at a highway crash scene or in response to any other hazard on the roadway that presents an immediate hazard or an emergency or life-threatening situation is not liable, except for willful misconduct, bad faith, or gross negligence, for injuries, costs, damages, expenses, or other liabilities resulting from a motorist operating a vehicle in violation of subsection (4)(a).

(5) Blue, red, and amber lights required in this section must be mounted as high as and as widely spaced laterally as practicable and capable of displaying to the front two alternately flashing lights of the specified color located at the same level and to the rear two alternately flashing lights of the specified color located at the same level or one rotating light of the specified color, mounted

as high as is practicable and visible from both the front and the rear. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight. Except as provided in 61-9-204(6), only police vehicles as defined in 61-1-118 may display blue lights, lenses, or globes.

(6) A police car and authorized emergency vehicle may be equipped with a flashing signal lamp that is green in color, visible from 360 degrees, and attached to the exterior roof of the vehicle for purposes of designation as the on-scene command and control vehicle in an emergency or disaster. The green light must have sufficient intensity to be visible at 500 feet in normal sunlight. Only the on-scene command and control vehicle may display green lights, lenses, or globes.

(7) Only a police vehicle or an authorized emergency vehicle may be equipped with the means to flash or alternate its headlamps or its backup lights.

(8) A violation of 61-9-402(4)(a) is considered reckless endangerment of highway workers, as provided in 61-8-315, and is punishable as provided in 61-8-715(2).

History: En. Sec. 129, Ch. 263, L. 1955; amd. Sec. 1, Ch. 40, L. 1959; amd. Sec. 1, Ch. 250, L. 1965; amd. Sec. 4, Ch. 153, L. 1975; R.C.M. 1947, 32-21-132; amd. Sec. 1, Ch. 361, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 116, Ch. 370, L. 1987; amd. Sec. 27, Ch. 431, L. 1997; amd. Sec. 5, Ch. 520, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 520 at end of (4)(a) inserted "subject to the provisions of 61-8-209 and 61-8-303"; inserted (4)(b) concerning limit on liability; inserted (8) concerning reckless endangerment of a highway worker; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

School bus requirements, 20-10-102.

Duties of Board of Public Education, 20-10-111.

Bus defined, 61-1-115.

School bus defined, 61-1-116.

Police vehicle defined, 61-1-118.

Authorized emergency vehicle defined, 61-1-119.

Police vehicles and authorized emergency vehicles, 61-8-107.

Reckless driving, 61-8-301.

Operation of vehicles on approach of police vehicles or authorized emergency vehicles, 61-8-346.

Meeting or passing school bus, 61-8-351.

Prohibited operation of special lighting equipment on school buses, 61-8-352.

61-9-403. Mufflers — prevention of noise. (1) Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke, and no person shall use a muffler cutout, bypass, or similar device upon a motor vehicle on a highway.

(2) The engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

History: En. Sec. 143, Ch. 263, L. 1955; R.C.M. 1947, 32-21-146.

Cross-References

Nuisances, Title 27, ch. 30.

61-9-404. Mirrors. A motor vehicle must be equipped with a mirror that reflects to the driver a view of the highway for a distance of at least 200 feet to the rear of the motor vehicle.

History: En. Sec. 144, Ch. 263, L. 1955; amd. Sec. 1, Ch. 113, L. 1959; R.C.M. 1947, 32-21-147; amd. Sec. 28, Ch. 431, L. 1997.

61-9-405. Windshields required, exception — unobstructed and equipped with wipers — window tinting and sunscreening —

restrictions — exemptions. (1) A motor vehicle, except a motorcycle, quadricycle, motor-driven cycle, or farm tractor, must be equipped with a front windshield meeting the requirements of 61-9-408, unless the driver wears safety glasses, goggles, or face shields at all times during the operation of the motor vehicle.

(2) A person may not drive a motor vehicle with:

(a) a sign, poster, substance, or other nontransparent material upon the front windshield, side wings, or side or rear windows of the vehicle that materially obstructs, obscures, or impairs the driver's clear view of the highway or an intersecting highway; or

(b) a windshield that is shattered or in such a defective condition that it materially impairs or obstructs the driver's clear view.

(3) The windshield on a motor vehicle must be equipped with a device for clearing rain, snow, or other moisture from the windshield.

The device must be maintained in good working order.

(4) A person may not operate a motor vehicle that is required to be registered in this state upon a highway if:

(a) the windshield has sunscreening material that is not clear and transparent below the AS-1 line or if it has a sunscreening material that is red, yellow, or amber in color above the AS-1 line;

(b) the front side windows have sunscreening or other transparent material that has a luminous reflectance of more than 35% or has light transmission of less than 24%;

(c) the rear window or side windows behind the front seat have sunscreening or other transparent material that has a luminous reflectance of more than 35% or has light transmission of less than 14%, except for the rear window or side windows behind the front seat on a multipurpose vehicle, van, or bus; or

(d) the windows of a camper, motor home, pickup cover, slide-in camper, or other motor vehicle do not meet the standards for safety glazing material specified by federal law in 49 CFR 571.205.

(5) As used in 61-9-428, 61-9-429, and this section, the following definitions apply:

(a) "Camper" means a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle for the purpose of providing shelter for persons.

(b) "Glass-plastic glazing material" means a laminate of one or more layers of glass and one or more layers of plastic in which a plastic surface of the glazing faces inward when the glazing is installed in a vehicle.

(c) "Light transmission" means the ratio of the amount of total light, expressed in percentages, that is allowed to pass through the sunscreening or transparent material to the amount of total light falling on the motor vehicle window.

(d) "Luminous reflectance" means the ratio of the amount of total light, expressed in percentages, that is reflected outward by the sunscreening or transparent material to the amount of total light falling on the motor vehicle window.

(e) "Motor home" means a multipurpose passenger vehicle that provides living accommodations.

(f) "Multipurpose vehicle" means a motor vehicle designed to carry 10 or fewer passengers that is constructed on a truck chassis or with special features for occasional off-road use.

(g) "Pickup cover" means a camper having a roof and sides but without a floor designed to be mounted on and removable from the cargo area of a pickup truck by the user.

(h) "Slide-in camper" means a camper having a roof, floor, and sides designed to be mounted on and removable from the cargo area of a truck by the user.

(i) "Sunscreening material" means a film, material, tint, or device applied to motor vehicle windows for the purpose of reducing the effects of the sun.

(6) Except as provided in subsection (7), subsection (4) applies to all vehicles that are equipped with tinted windows, including windows with less than 100% light transmission to which additional sunscreening material has been applied.

(7) Subsection (4) does not apply to a multipurpose vehicle that is equipped with tinted windows that were installed by the manufacturer of the vehicle or to a hearse, ambulance, government vehicle, or any other vehicle to which a currently valid certificate of waiver is affixed as specified under 61-9-428. A certificate of waiver must be issued by the department for a vehicle that was registered in this state on October 1, 1991, and was equipped with a sunscreening device or other material prohibited under subsection (4) on October 1, 1991.

History: En. Sec. 145, Ch. 263, L. 1955; R.C.M. 1947, 32-21-148; amd. Sec. 1, Ch. 777, L. 1991; amd. Sec. 1, Ch. 133, L. 1995; amd. Sec. 29, Ch. 431, L. 1997.

Cross-References

Automobile glass — sale, repair, or replacement — advertising allowed, 30-14-225.

Automobile glass repair shops — provisions pertaining to insurance, 33-18-221 through 33-18-223.

Obstruction to driver's view or driving mechanism, 61-8-360.

61-9-406. Restrictions as to tire equipment — particular tires, chains, or traction equipment. (1) A solid rubber tire on a vehicle must have rubber on its entire traction surface at least 1 inch thick above the edge of the flange of the entire periphery.

(2) A person may not operate or move on a highway a motor vehicle, trailer, or semitrailer having a metal tire in contact with the roadway.

(3) A tire on a vehicle moved on a highway may not have on its periphery a block, stud, flange, cleat, or spike, or other protuberance of a material other than rubber that projects beyond the tread of the traction surface of the tire, except that it is permissible to use farm machinery with tires having protuberances that will not injure the highway. It is also permissible to use tire chains of reasonable proportions or pneumatic tires, the traction surfaces of which have been embedded with material, such as wood, wire, plastic or metal, that may not protrude more than one-sixteenth of an inch beyond the tire tread or that are clearly marked by the manufacturer on the sidewall "all season m&s" (or "all season mud and snow"), upon a vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid. The use of pneumatic tires embedded as provided in this section is permitted only between October 1 and May 31 of each year, except that one of those tires may

be used for a spare in case of tire failure. School buses equipped with such embedded pneumatic tires may operate from August 15 through the following June 15.

(4) The department of transportation and local authorities in their respective jurisdictions may in their discretion issue special permits authorizing the operation upon a highway of farm tractors or other farm machinery or of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of the movable tracks, the operation of which upon the highway would otherwise be prohibited under this section.

(5) If the department of transportation determines at any time that dangerous or unsafe conditions on a highway require particular tires, tire chains, or traction equipment for vehicles in addition to or beyond the ordinary pneumatic rubber tires, the department may establish the following recommendations or requirements with respect to the use of the equipment for all vehicles using the highway:

(a) chains or other approved traction devices recommended for driver wheels;

(b) chains or other approved traction devices required for driver wheels; or

(c) chains required for driver wheels.

(6) Equipment required by subsection (5)(b) or (5)(c) must conform to rules established by the department of justice.

(7) The department of transportation shall place and maintain signs and other traffic-control devices on a highway designated under subsection (5) that indicate the tire, tire chain, or traction equipment recommendation or requirement determined for vehicles. The signs or traffic-control devices may not prohibit the use of pneumatic tires embedded as provided in subsection (3) between October 1 and May 31 of each year, but when the department of transportation determines that chains are required and that no other traction equipment will suffice, the requirement is applicable to tires on driver wheels of one axle of a vehicle, including embedded tires. The signs or traffic-control devices may differentiate in recommendations or requirements for four-wheel-drive vehicles in gear.

History: En. Sec. 146, Ch. 263, L. 1955; amd. Sec. 1, Ch. 92, L. 1967; amd. Sec. 1, Ch. 194, L. 1971; amd. Sec. 1, Ch. 192, L. 1973; amd. Sec. 67, Ch. 316, L. 1974; R.C.M. 1947, 32-21-149(a) thru (d); amd. Sec. 1, Ch. 448, L. 1991; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

School bus defined, 20-10-101, 61-1-116.

Department of Transportation — general powers and duties, Title 60, ch. 2, part 2.

Special mobile equipment defined, 61-1-104.

Farm tractor defined, 61-1-109.

Trailer defined, 61-1-111.

Semitrailer defined, 61-1-112.

Pneumatic tire defined, 61-1-125.

Solid tire defined, 61-1-126.

Metal tire defined, 61-1-127.

Violations of tire restrictions — penalty, 61-9-519.

Special permits, 61-10-146.

Powers of local authorities to regulate traffic, 61-12-101.

61-9-407. Fenders, splash aprons, or flaps required on certain vehicles — dimension and location. (1) A person may not move, or permit to be moved, a vehicle, except a motorcycle, quadricycle, motor-driven cycle, or farm tractor, as defined in this title, upon the public highways without having first equipped the rearmost wheels or set of wheels of the vehicle with fenders, splash aprons, or flaps. The fenders, splash aprons, or flaps must be designed, constructed, and attached to the vehicle in a manner that arrests and deflects dirt, mud, water, rocks, and other substances that may be picked up by the rear wheels of the vehicle and thrown into the air, as follows:

(a) If the vehicle is equipped with fenders, the fenders must extend in full width from a point above and forward of the center of the tire or tires over and to the rear of the tires.

(b) If the vehicle is equipped with splash aprons or flaps, the splash aprons or flaps must extend downward in full width from a point not lower than halfway between the center of the tire or tires and the top of the tire or tires and to the rear of the tires.

(c) If the vehicle is in excess of 8,000 pounds gross vehicle weight or rating, the fenders, splash aprons, or flaps must extend downward to a point that is not more than 10 inches above the surface of the highway when the vehicle is empty.

(d) If the vehicle is 8,000 pounds or less gross vehicle weight or rating, the fenders, splash aprons, or flaps must extend downward to a point that is not more than 20 inches above the surface of the highway when the vehicle is empty.

(2) Fenders, splash aprons, or flaps, as used in subsection (1), must be constructed as follows:

(a) when measured on the cross-sections of the tread of the wheel or on the combined cross-sections of the treads of multiple wheels, the fender, splash apron, or flap extends at least to each side of the width of the tire or of the combined width of the multiple tires; and

(b) the fender, splash apron, or flap is capable at all times of arresting and deflecting dirt, mud, water, or other substance that may be picked up and carried by the wheel or wheels.

(3) This section does not apply to street rod vehicles; motor vehicles not originally equipped with fenders, splash aprons, or flaps; or motor vehicles for which fenders, splash aprons, or flaps were not required by federal law or regulation at the time of manufacture.

(4) For purposes of 61-9-430 and this section, "street rod" means a vehicle manufactured before 1949 that has been modified in body style or design.

History: En. Sec. 1, Ch. 286, L. 1969; R.C.M. 1947, 32-21-149.1(a), (b); amd. Sec. 1, Ch. 65, L. 1987; amd. Sec. 1, Ch. 791, L. 1991; amd. Sec. 30, Ch. 431, L. 1997.

Cross-References

Truck defined, 61-1-107.

Truck tractor defined, 61-1-108.

Trailer defined, 61-1-111.

Semitrailer defined, 61-1-112.

Bus defined, 61-1-115.

Violations of provisions relating to fenders, splash aprons, or flaps — penalty, 61-9-515.

61-9-408. Safety glazing material in motor vehicles. (1) A person may not sell a new motor vehicle and a new motor vehicle may not be registered unless the vehicle is equipped with safety glazing material wherever glazing material is used in doors, windows, and windshields. These provisions apply to all passenger-type motor vehicles, including passenger buses and school buses. With respect to trucks, including truck tractors, the requirements as to safety glazing material apply to all glazing material used in doors, windows, and windshields in the driver's compartments of the vehicles.

(2) The term "safety glazing materials" means glazing materials constructed, treated, or combined with other materials to reduce substantially in comparison with ordinary sheet glass or plate glass the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they may be cracked or broken.

History: En. Sec. 147, Ch. 263, L. 1955; R.C.M. 1947, 32-21-150; amd. Sec. 31, Ch. 431, L. 1997.

Cross-References

Truck defined, 61-1-107.

Truck tractor defined, 61-1-108.

Bus defined, 61-1-115.

School bus defined, 61-1-116.

Sales and distribution of motor vehicles, Title 61, ch. 4.

61-9-409. Seatbelts required in vehicles manufactured after 1964. (1) An automobile that was manufactured or assembled after January 1, 1965, and on or before January 1, 1968, must be equipped with safety belts installed for use in the left front and right front seats.

(2) A motor vehicle manufactured after January 1, 1968, must be equipped at each designated seating position with a safety belt system required for that seating position by the standards of the United States department of transportation at the time that the vehicle was manufactured.

(3) The safety belts required by this section must remain installed and in good working condition.

History: En. Sec. 1, Ch. 115, L. 1965; R.C.M. 1947, 32-21-150.1; amd. Sec. 32, Ch. 431, L. 1997.

Cross-References

Sales and distribution of motor vehicles, Title 61, ch. 4.

Penalty for seatbelt violations, 61-9-516.

Montana Seatbelt Use Act, Title 61, ch. 13, part 1.

61-9-410. Repealed. Sec. 42, Ch. 431, L. 1997.

History: En. Sec. 2, Ch. 115, L. 1965; R.C.M. 1947, 32-21-150.2; amd. Sec. 1, Ch. 503, L. 1985.

61-9-411. Certain vehicles to carry flares or other warning devices. (1) No person shall operate any motor truck of 1-ton capacity or greater, passenger bus, or truck tractor upon any highway outside the corporate limits of municipalities at any time unless there shall be carried in such vehicle, except as provided in subsection (2), the following equipment:

(a) at least three flares or three red electric lanterns or three portable red emergency reflectors each of which shall be capable of being seen and distinguished at a distance of not less than 600 feet under normal atmospheric conditions at nighttime. No portable reflector unit shall be used for the purpose of compliance with the requirements of this section unless it is so designed and constructed as to display a minimum of 24 square inches of reflective surface, or two reflecting elements; one above the other, either of which shall be capable of reflecting red light clearly visible from all distances within 600 feet to 100 feet under normal atmospheric conditions at night when directly in front of lawful upper beams of headlamps;

(b) at least three red-burning fusees unless red electric lanterns or red portable emergency reflectors are carried;

(c) at least two red cloth flags, no less than 12 inches square, with standards to support such flags.

(2) No person shall operate at the time and under the conditions stated in subsection (1) any motor vehicle used for the transportation of explosives, any cargo tank truck used for the transportation of flammable liquids or compressed gases, or any motor vehicle using compressed gas as a fuel unless there shall be carried in such vehicle three red electric lanterns or three portable red emergency reflectors meeting the requirements of subsection (1), and there shall not be carried in any said vehicle any flares, fusees, or signal produced by flame.

(3) As an alternative to the equipment required in subsections (1) and (2), three emergency reflective triangles conforming with U.S. department of transportation motor vehicle safety standard 125 may be carried.

History: En. Sec. 148, Ch. 263, L. 1955; amd. Sec. 1, Ch. 108, L. 1957; amd. Sec. 1, Ch. 70, L. 1975; R.C.M. 1947, 32-21-151.

Cross-References

Administrative rules governing transportation and storage of explosives — Department of Justice, 50-3-102.

Truck defined, 61-1-107.

Truck tractor defined, 61-1-108.

Bus defined, 61-1-115.

Explosives defined, 61-1-506.

Flammable liquid defined, 61-1-507.

61-9-412. Display of warning devices when vehicle disabled. (1) Whenever any motor truck, passenger bus, truck, tractor, trailer, semitrailer, or pole trailer is disabled upon the traveled portion of any highway or the shoulder thereof outside of any municipality at any time when lighted lamps are required on vehicles the driver of such vehicle shall display the following warning devices upon the highway during the time the vehicle is so disabled on the highway except as provided in subsection (2):

(a) A lighted fusee, a lighted red electric lantern, or a portable red emergency reflector shall be immediately placed at the traffic side of the vehicle in the direction of the nearest approaching traffic.

(b) As soon thereafter as possible but in any event within the burning period of the fusee (15 minutes), the driver shall place three liquid burning flares (pot torches) or three lighted red electric lanterns or three portable red emergency reflectors on the traveled portion of the highway in the following order:

(i) one approximately 100 feet from the disabled vehicle in the center of the lane occupied by such vehicle and toward traffic approaching in that lane;

(ii) one approximately 100 feet in the opposite direction from the disabled vehicle and in the center of the traffic lane occupied by such vehicle;

(iii) one at the traffic side of the disabled vehicle not less than 10 feet rearward or forward thereof in the direction of the nearest approaching traffic. If a lighted red electric lantern or a red portable emergency reflector has been placed at the traffic side of the vehicle in accordance with subsection (1)(b)(i) of this section, it may be used for this purpose.

(2) Whenever any vehicle referred to in this section is disabled within 500 feet of a curve, hillcrest, or other obstruction to view, the warning signal in that direction shall be so placed as to afford ample warning to other users of the highway but in no case less than 500 feet from the disabled vehicle.

(3) Whenever any vehicle of a type referred to in this section is disabled upon any roadway of a divided highway during the time that lights are required, the appropriate warning devices prescribed in subsections (1) and (5) shall be placed as follows:

(a) one at a distance of approximately 200 feet from the vehicle, in the center of the lane occupied by the stopped vehicle and in the direction of traffic approaching in that lane;

(b) one at a distance of approximately 100 feet from the vehicle, in the center of the lane occupied by the vehicle and in the direction of traffic approaching in that lane;

(c) one at the traffic side of the vehicle and approximately 10 feet from the vehicle in the direction of the nearest approaching traffic.

(4) Whenever any vehicle of a type referred to in this section is disabled upon the traveled portion of a highway or the shoulder thereof outside of any municipality at any time when the display of fusees, flares, red electric lanterns, or portable red emergency reflectors is not required, the driver of the vehicle shall display two red flags upon the roadway in the lane of traffic occupied by the disabled vehicle, or at a distance of approximately 100 feet in advance of the vehicle, and one at a distance of approximately 100 feet to the rear of the vehicle.

(5) Whenever any motor vehicle used in the transportation of explosives or any cargo tank truck used for the transportation of any flammable liquid or compressed flammable gas, or any motor vehicle using compressed gas as a fuel, is disabled upon any highway of this state at any time or place mentioned in subsection (1) of this section, the driver of such vehicle shall immediately display the following warning devices:

(a) one red electric lantern or portable red emergency reflector placed on the roadway at the traffic side of the vehicle and two red electric lanterns or portable red reflectors, one placed approximately 100 feet to the front and one placed approximately 100 feet to the rear of the disabled vehicle in the center of the traffic lane occupied by such vehicle;

(b) flares, fusees, or signals produced by flame shall not be used as warning devices for disabled vehicles of the type mentioned in this subsection (5).

(6) The flares, fusees, red electric lanterns, portable red emergency reflectors and flags to be displayed as required in this section shall conform with the requirements of 61-9-411 applicable thereto.

History: **En. Sec. 149, Ch. 263, L. 1955; R.C.M. 1947, 32-21-152.**

Cross-References

Trailer defined, 61-1-111.
Semitrailer defined, 61-1-112.
Pole trailer defined, 61-1-114.

61-9-413. Vehicles transporting explosives. (1) Any person operating any vehicle transporting any explosive as a cargo or part of a cargo upon a highway shall at all times comply with the provisions of this section.

(2) Said vehicle shall be marked or placarded on each side and the rear with the word "EXPLOSIVES" in letters not less than 8 inches high, or there shall be displayed on the rear of such vehicle a red flag not less than 24 inches square marked with the word "DANGER" in white letters 6 inches high.

(3) Every said vehicle shall be equipped with not less than two fire extinguishers, filled and ready for immediate use, and placed at a convenient point on the vehicle so used.

(4) The department is hereby authorized and directed to promulgate such additional regulations governing the transportation of explosives and other dangerous articles by vehicles upon the highway as it shall deem advisable for the protection of the public.

History: En. Sec. 150, Ch. 263, L. 1955; R.C.M. 1947, 32-21-153; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Administrative rules governing transportation and storage of explosives — Department of Justice, 50-3-102.

Explosives defined, 61-1-506.

61-9-414. Logging trucks. (1) A truck or truck trailer combination, except pole trailers, actively engaged in transporting logs must be equipped with chains, cables, steel straps, or fiber webbing with working load limits that meet or exceed the manufacturer's marked value. The number of tie-down assemblies must be determined by the working load limits and the total weight of the load. The working load limits must equal or exceed 1 ½ times the total weight of the load.

(2) A pole trailer actively engaged in transporting logs upon the highways of the state must be equipped as follows:

(a) At least three binders are required as standard equipment. The binders must:

(i) be made of steel chain or steel cable;

(ii) have a minimum diameter of three-eighths of an inch; and

(iii) be long enough to encompass any load when secured by a fastener.

(b) Binders used to secure loads of logs together must be fastened by means of a fastener.

(i) The minimum diameter of the portions of the fastener under direct stress from the binder must be three-eighths of an inch.

(ii) The handle, or leverage portion of the fastener, when in use in tightening and holding the binder must be securely fastened to the binder or to the fastener so that it cannot be accidentally loosened.

(c) At least two binders must be in use on all loads. The binders must be placed as close as reasonably possible to the front and rear bunks.

(d) If short logs are loaded on top of longer logs, sufficient binders must be used to secure both ends of the short logs to the main body of the load. A log may not extend laterally beyond the stakes that form the outer boundary of the load at the top of the stakes. Logs or poles loaded above the tops of the stakes must be loaded in a pyramidal fashion.

History: En. Sec. 119, Ch. 263, L. 1955; amd. Sec. 1, Ch. 233, L. 1959; amd. Sec. 1, Ch. 182, L. 1974; R.C.M. 1947, 32-21-122(part); amd. Sec. 33, Ch. 431, L. 1997.

Cross-References

Truck defined, 61-1-107.

Truck tractor defined, 61-1-108.

Pole trailer defined, 61-1-114.

61-9-415. Slow-moving vehicles. (1) It is unlawful for a person to operate on a state highway, a farm, rural, or county road, or a city street of this state a slow-moving vehicle or equipment, an animal-drawn vehicle, or any other machinery, including all road construction or maintenance machinery, except when engaged in actual construction or maintenance work either guarded by a flag person or clearly visible warning signs, that normally travels or is normally used at a speed of less than 25 miles an hour, unless there is displayed on the rear of the vehicle an emblem as provided in subsection (2). The requirement of the emblem is in addition to any lighting devices required by law.

(2) The emblem required by subsection (1) must be of substantial construction and must be a based-down equilateral triangle of fluorescent yellow-orange film or equivalent quality paint with a base of 14 inches and a height of 12 inches. The triangle must be bordered with reflective red strips having a minimum width of 1 3⁄4 inches, with the vertices of the overall triangle truncated so that the remaining height is a minimum of 14 inches. The emblem must be mounted on the rear of the vehicle near the horizontal geometric center of the vehicle at a height of 3 to 5 feet above the roadway and must be maintained in a clean, reflective condition.

(3) In addition to the requirements in subsection (2), on a highway that has only two lanes for traffic moving in opposite directions, when an overtaking vehicle being operated in conformity with 61-8-303 does not have a clear lane for passing as required by 61-8-325, the driver of a slower-moving, overtaken vehicle shall, at the first opportunity and when a safe turnout exists, move the overtaken vehicle off the main-traveled portion of the highway until the overtaking vehicle is safely clear of the overtaken vehicle.

(4) On an interstate highway or on any other four-lane highway, a slow-moving vehicle, subject to the requirements of this section, must be driven in the right lane as far to the right as possible, including the shoulder of the highway.

History: En. Sec. 127, Ch. 263, L. 1955; amd. Sec. 1, Ch. 247, L. 1969; R.C.M. 1947, 32-21-130(b), (c), (e); amd. Sec. 34, Ch. 431, L. 1997; amd. Sec. 1, Ch. 449, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 449 inserted (4) requiring that a slow-moving vehicle be driven in the right lane as far right as possible when traveling on an interstate or other four-lane highway; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Use of motorized wheelchairs on public streets, 49-4-311.

Special mobile equipment defined, 61-1-104.

Flag person defined, 61-1-411.

Flag vehicle defined, 61-1-412.

Traffic laws applicable to persons driving animal-drawn vehicles, 61-8-108.

Minimum speed regulations, 61-8-311.

Violations of general lighting requirements and slow-moving vehicle provisions — penalty, 61-9-513.

61-9-416. Commercial tow truck definition — requirements. (1) "Commercial tow truck" means a motor vehicle operating for compensation that is equipped with specialized equipment designed and intended for towing or the recovery of wrecked, disabled, or abandoned vehicles or other objects creating a hazard on the public roadways. A commercial tow truck must be equipped with:

(a) not less than two red flares, two red lanterns, or two warning lights or reflectors. The reflectors must be of a type approved by the department.

(b) at least two highway warning signs as provided in 61-9-431.

(c) a dry chemical fire extinguisher of at least 5 pound capacity or an equivalent alternative type of fire extinguisher, approved by the department;

(d) a lamp emitting a flashing red or amber light meeting the requirements of 61-9-402(5), or both a red and amber light, mounted on top of the cab of the tow truck or on the top of the crane or hoist if the light can be seen from the front of the tow truck. The light from the lamp must be visible for a distance of 1,000 feet under normal atmospheric conditions and must be mounted so that it can be securely fastened with the lens of the lamp facing the rear of the tow truck upon which it is mounted. When standing at the location from which the disabled vehicle is to be towed, the operator of the tow truck may unfasten the red light and place it in a position considered advisable to warn approaching drivers. When the disabled vehicle is ready for towing, the red light must be turned to the rear of the tow truck upon which it is mounted and securely locked in this position. Additional red or amber lights of an approved type may be displayed at either side or both sides of the tow truck during the period of preparation at the location from which the disabled vehicle is to be towed.

(e) one or more brooms, and the operator of the tow truck engaged to remove a disabled vehicle from the scene of an accident shall remove all glass and debris deposited upon the roadway by the disabled vehicle that is to be towed;

(f) a shovel, and whenever practical, the tow truck operator engaged to remove a disabled vehicle shall spread dirt upon that portion of the roadway where oil or grease has been deposited by the disabled vehicle; and

(g) a portable electrical extension cord or other device for use in displaying stop, turn, and taillamps on the rear of the disabled vehicle. The length of the extension cord may not be less than the length of the combined vehicles. When a disabled vehicle is towed, the tow truck operator shall provide for the rear light that is capable of displaying a stop signal, turn signal, and taillamps by means of the extension cord or other device referred to in this subsection.

(2) The operator of a commercial tow truck used for the purpose of rendering assistance to other vehicles shall, when the rendering of assistance necessitates the obstruction of a portion of the roadway, place a highway warning sign as required in 61-9-431.

(3) The owner or operator of a commercial tow truck who complies with the requirements of 61-8-906 and 61-8-907 and this section may stop or park the tow truck upon a highway for the purpose of rendering assistance to a disabled vehicle, notwithstanding other provisions of this code.

(4) A commercial tow truck company that is in compliance with 61-9-431 and that is operating an emergency service vehicle and using signal equipment in rendering assistance at a highway crash scene or in response to any other hazard on the roadway that presents an immediate hazard or an emergency or life-threatening situation is not liable, except for willful misconduct, bad faith, or gross negligence, for injuries, costs, damages, expenses, or other liabilities resulting from a motorist operating a vehicle in violation of 61-9-402(4).

History: En. Sec. 1, Ch. 201, L. 1959; R.C.M. 1947, 32-21-161; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 27, L. 1991; amd. Sec. 14, Ch. 283, L. 1995; amd. Sec. 35, Ch. 431, L. 1997; amd. Sec. 6, Ch. 520, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 520 at end of (1)(b) substituted "as provided in 61-9-431" for "of a uniform type, with dimensions of 3 x 3 feet, lettering 5 inches high, and reflectorized orange background and black border, as prescribed by the department. The signs must be designed to be visible both day and night. The warning signs must bear the words "wreck ahead", "tow truck ahead", or "wrecker ahead", as prescribed by the department"; at end of (2) substituted "61-9-431" for "subsection (1)(b):

(a) in an area in which the posted speed limit is 45 miles an hour or less, not less than 450 feet in advance of the disabled vehicle and an equal distance to the rear of the disabled vehicle; and

(b) in an area in which the posted speed limit is more than 45 miles an hour or no speed limit is posted, 600 feet in advance of the disabled vehicle, except on a divided highway where the disabled vehicle does not cause disruption of traffic traveling on the opposite side of the divided highway, and an equal distance to the rear of the disabled vehicle"; deleted former (3) and (4) that read: "(3) A local government unit may adopt an ordinance exempting a commercial tow truck operator from the requirements of subsection (2) within the limits of an incorporated city or town.

(4) When a motor vehicle is disabled on the highway during the hours of darkness, the tow truck operator called to render assistance shall immediately upon arrival place warning signs upon the highway as prescribed in this section and shall also place not less than one red flare, red lantern, or warning light or reflector in close proximity to each warning sign"; inserted (4) concerning limit on liability; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Emergency service vehicles defined, 61-1-120.

Violation of towing requirements — penalty, 61-9-517.

61-9-417. Headgear required for minor motorcycle riders. (1) An operator and passenger under 18 years of age of a motorcycle or quadricycle operated upon the streets or highways of this state shall wear protective headgear upon the head. The headgear must meet standards established by the department of justice.

(2) A person may not operate a motorcycle upon a highway in the state unless all passengers under 18 years of age are in compliance with subsection (1).

History: En. Sec. 1, Ch. 398, L. 1973; amd. Sec. 1, Ch. 179, L. 1974; amd. Sec. 1, Ch. 273, L. 1974; amd. Sec. 1, Ch. 54, L. 1977; R.C.M. 1947, 32-21-105.1(1); amd. Sec. 45, Ch. 516, L. 1985; amd. Sec. 36, Ch. 431, L. 1997.

Cross-References

Motorcycle defined, 61-1-105.

Quadricycle defined, 61-1-133.

Riding on motorcycles, 61-8-359.

Violation of motorcycle requirements — penalty, 61-9-518.

61-9-418. Motorcycle noise suppression devices. All motorcycles or quadricycles operated on the streets and highways of this state shall be equipped at all times with noise suppression devices, including an exhaust muffler, in good working order and in constant operation. In addition, all motorcycles and quadricycles operating on streets and highways shall meet the following noise decibel limitations, on the standard A scale, such decibel limitations to be measured at 50 feet distant from the closest point to the motorcycle or quadricycle:

(1)	any cycle manufactured prior to 1970	92 db(A)
(2)	any cycle manufactured after 1969 but prior to 1973	88 db(A)
(3)	any cycle manufactured after 1972 but prior to 1975	86 db(A)
(4)	any cycle manufactured after 1974 but prior to 1978	80 db(A)
(5)	any cycle manufactured after 1977 but prior to 1988	75 db(A)
(6)	any cycle manufactured after 1987	70 db(A)

History: En. Sec. 1, Ch. 398, L. 1973; amd. Sec. 1, Ch. 179, L. 1974; amd. Sec. 1, Ch. 273, L. 1974; amd. Sec. 1, Ch. 54, L. 1977; R.C.M. 1947, 32-21-105.1(2); amd. Sec. 46, Ch. 516, L. 1985.

61-9-419. "Properly restrained" defined. As used in 61-9-420 through 61-9-423, "properly restrained" means fastened in a manner prescribed by the manufacturer of the system that permits the system to act as a body restraint, but does not mean a system in which the only body restraint is a safety belt of the type required by 61-9-409.

History: En. Sec. 1, Ch. 177, L. 1983; amd. Sec. 37, Ch. 431, L. 1997.

Cross-References

Seatbelts required in new vehicles, 61-9-409.

61-9-420. Child safety restraint systems — standards — exemptions. (1) If a child under 2 years of age is a passenger in a motor vehicle, that motor vehicle must be equipped with one child safety restraint for each child in the vehicle and each child must be properly restrained.

(2) A child between 2 and 4 years of age or weighing less than 40 pounds who is a passenger in a motor vehicle must be properly restrained or restrained in a safety belt that meets applicable federal motor vehicle safety standards.

(3) The department shall by rule establish standards in compliance with 61-9-419 through 61-9-423 and applicable federal standards for approved types of child safety restraint systems purchased after January 1, 1984.

(4) A person is not required to have more than three child safety restraint systems in a vehicle.

(5) The department may by rule exempt from the requirements of subsection (1) a child who because of a physical or medical condition or body size cannot be placed in a child safety restraint system or safety belt.

History: En. Sec. 2, Ch. 177, L. 1983; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 38, Ch. 431, L. 1997.

Cross-References

Residence — rules for determining, 1-1-215.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Motor vehicle defined, 61-1-102.

61-9-421. Certain vehicles exempt. Section 61-9-420 is not applicable to a vehicle that:

(1) is a motorbus, schoolbus, taxicab, moped, quadricycle, or motorcycle or is not required to be equipped with safety belts under 49 CFR 571 as it reads on January 1, 1984; or

(2) has a seating capacity as designated by the manufacturer of two persons and there are two persons 4 years of age or older in the vehicle.

History: En. Sec. 3, Ch. 177, L. 1983; amd. Sec. 47, Ch. 516, L. 1985.

Cross-References

School bus defined, 20-10-101, 61-1-116.

Motorcycle defined, 61-1-105.

Motor-driven cycle defined, 61-1-106.

Bus defined, 61-1-115.

Bicycle defined, 61-1-123.

Quadricycle defined, 61-1-133.

61-9-422. Evidence admissible without presumption of negligence. Evidence of compliance or failure to comply with 61-9-420 is admissible in any civil action for personal injury or property damage resulting from the use or operation of a motor vehicle, but failure to comply with 61-9-420 does not alone constitute negligence.

History: **En. Sec. 4, Ch. 177, L. 1983.**

Cross-References

Evidence — preliminary questions of admissibility, Rule 104, M.R.Ev. (see Title 26, ch. 10).

Liability for negligence as well as willful acts, 27-1-701.

61-9-423. Penalty. Violation of 61-9-420 is punishable by a fine of not more than $100.

History: **En. Sec. 5, Ch. 177, L. 1983; amd. Sec. 1, Ch. 161, L. 1985; amd. Sec. 39, Ch. 431, L. 1997.**

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

61-9-424 through 61-9-427 reserved.

61-9-428. Window tinting and sunscreening — waiver — conditions. The highway patrol or a local law enforcement agency may grant a waiver of the standards of 61-9-405(4) for reasons of safety or security or for medical reasons based on an affidavit signed by a licensed physician. The waiver must be in writing and must include the vehicle identification number, registration number, or other description to clearly identify the motor vehicle to which the waiver applies and the date issued, the name of the owner of the vehicle, the reason for granting the waiver, the dates the waiver is effective, and the signature of the law enforcement officer granting the waiver. The highway patrol or the local law enforcement agency shall keep a copy of the waiver until the waiver expires.

History: **En. Sec. 2, Ch. 777, L. 1991.**

61-9-429. Window tinting and sunscreening — penalty. (1) A person who owns or operates a motor vehicle in violation of 61-9-405(4) is guilty of a misdemeanor and is punishable as provided in 46-18-212.

(2) A person who applies a sunscreening material or a glass-plastic glazing material in a manner that results in a motor vehicle having a window that violates the requirements of 61-9-405(4) is guilty of a misdemeanor and is punishable as provided in 46-18-212.

History: **En. Sec. 3, Ch. 777, L. 1991.**

61-9-430. Bumpers. (1) A motor vehicle of less than 10,000 pounds gross vehicle weight or rating registered in Montana, except a motorcycle, a quadricycle, a motor-driven cycle, or a farm tractor, must be equipped with a front bumper and, unless the vehicle is equipped with work-performing features that make installation impractical or unnecessary, with a rear bumper.

(2) This section does not apply to street rod vehicles, as defined in 61-9-407(4), vehicles not originally equipped with front or rear bumpers, or vehicles for which bumpers were not required by federal law or regulation at the time of manufacture.

History: **En. Sec. 40, Ch. 431, L. 1997.**

61-9-431. Use of warning signs, flares, reflectors, lanterns, flag persons. (1) The operator of a commercial tow truck, in compliance with the requirements of 61-8-906 and 61-8-907, shall, when rendering assistance at a hazard on the highway that necessitates the obstruction of a portion or all of the roadway, place at least two warning signs as required in this section as soon as is practicable under the circumstances. Flag persons and cones may be used to augment the warning signs.

(2) Highway warning signs must be of a uniform type, with dimensions of 3 x 3 feet, lettering 5 inches high, and reflectorized orange background and black border, as prescribed by the department. The signs must be designed to be visible both day and night. The warning signs must bear the words “hazard ahead”, “lane closed ahead”, “road closed ahead”, “wreck ahead”, “tow truck ahead”, or “wrecker ahead”, as prescribed by the department.

(3) The operator of a commercial tow truck used for the purpose of rendering assistance at a hazard on the highway that necessitates the obstruction of a portion of the roadway shall place a highway warning sign as required in subsection (2):

(a) in an area in which the posted speed limit is 45 miles an hour or less, not less than 600 feet in advance of the hazard and an equal distance to the rear of the hazard; and

(b) in an area in which the posted speed limit is more than 45 miles an hour or no speed limit is posted, 1,000 feet in advance of the hazard, except on a divided highway where the hazard does not cause disruption of traffic traveling on the opposite side of the divided highway, and an equal distance to the rear of the hazard.

(4) A local government unit may adopt an ordinance exempting an operator of a commercial tow truck from the requirements of subsection (2) within the limits of an incorporated city or town.

(5) When a hazard exists on the highway during the hours of darkness, the operator of a commercial tow truck called to render assistance shall place warning signs upon the highway as prescribed in this section and shall also place at least one red flare, red lantern, or warning light or reflector in close proximity to each warning sign.

(6) A violation of warning signs placed as provided in subsection (3) is considered reckless endangerment of highway workers, as provided in 61-8-315, and is punishable as provided in 61-8-715(2).

History: En. Sec. 7, Ch. 520, L. 1999.

Compiler's Comments

Effective Date: This section is effective October 1, 1999.

Part 5
Enforcement — Penalties

Part Cross-References

Motor carriers safety — enforcement by highway patrol, 44-1-1005.

Enforcement by Department of Transportation personnel, Title 61, ch. 12, part 2.

61-9-501. Inspections by officers of the department. (1) The department or its agents may at any time upon reasonable cause to believe that a vehicle is unsafe or not equipped as required by law or that its equipment is not in proper adjustment or repair require the driver of such vehicle to stop and submit such vehicle to an inspection and such test with reference thereto as may be appropriate.

(2) In the event such vehicle and its equipment are found to be in safe condition and in full compliance with the law, the officer making such inspection may issue to the driver an official certificate of inspection and approval of such vehicle specifying those parts or equipment so inspected and approved.

(3) In the event such vehicle is found to be in unsafe condition or any required part or equipment is not present or is not in proper repair and adjustment the officer shall give a written notice to the driver and shall send a copy to the department. Said notice shall specify the deficiencies and require that such vehicle be placed in safe condition and its equipment in proper repair and adjustment within 5 days.

History: En. Sec. 152, Ch. 263, L. 1955; R.C.M. 1947, 32-21-155; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Motor carriers safety — enforcement by Highway Patrol, 44-1-1005.

Enforcement by Department of Transportation personnel, Title 61, ch. 12, part 2.

61-9-502. Semiannual inspection of school buses. (1) The department shall perform the semiannual inspection of school buses, one of which shall be at least 30 days prior to the beginning of the school term, and reinspect the buses, if necessary, before the beginning of the school term.

(2) The department's inspection shall determine if the school buses meet the minimum standards for school buses as adopted by the board of public education.

History: En. 32-21-155.1 by Sec. 2, Ch. 179, L. 1969; amd. Sec. 1, Ch. 141, L. 1973; R.C.M. 1947, 32-21-155.1; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

School bus requirements, 20-10-102.

School bus defined, 61-1-116.

61-9-503. Owners and drivers to comply with inspection laws. (1) No person driving a vehicle may refuse to submit the vehicle to an inspection and test when required to do so by the department or an authorized officer or employee of the department.

(2) Every owner or driver, upon receiving a notice as provided in 61-9-501, shall comply therewith and shall within 5 days have the deficiencies corrected and forward notification of the correction to the department. In lieu of compliance with this subsection, the vehicle may not be operated, except as provided in subsection (3).

(3) No person may operate any vehicle after receiving a notice with reference thereto as above provided except as may be necessary to return the vehicle to the residence or place of business of the owner or driver, if within a distance of 20 miles, or to a garage until the vehicle and its equipment have been placed in proper repair and adjustment and otherwise made to conform to the requirements of this chapter.

History: En. Sec. 153, Ch. 263, L. 1955; R.C.M. 1947, 32-21-156; amd. Sec. 73, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

61-9-504. Rules. The department is hereby empowered to make additional rules governing the use of safety equipment on motor vehicles, vehicles, and/or combination of vehicles, that is, trailer hitches, safety chains, mounts, tow bars, and other similar equipment as it shall deem advisable for the protection of the public.

History: **En. Sec. 119, Ch. 263, L. 1955; amd. Sec. 1, Ch. 233, L. 1959; amd. Sec. 1, Ch. 182, L. 1974; R.C.M. 1947, 32-21-122(part); amd. Sec. 1, Ch. 503, L. 1985.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

61-9-505 through 61-9-510 reserved.

61-9-511. Violation of chapter — penalty. (1) It is a misdemeanor for any person to violate any of the provisions of this chapter unless the violation is declared to be a felony.

(2) A person convicted of a misdemeanor for a violation of any of the provisions of this chapter for which another penalty is not provided shall for a first conviction be punished by a fine of not less than $10 or more than $100. For a second conviction within 1 year, the person shall be punished by a fine of not less than $25 or more than $200. Upon a third or subsequent conviction within 1 year after the first conviction, the person shall be punished by a fine of not less than $50 or more than $500.

(3) Except as provided in subsection (4), failure to pay a fine imposed under this chapter is a civil contempt of the court. On failure of payment of a fine, the court may:

(a) order enforcement of the fine by execution in the manner provided in 25-13-204 and under the provisions of Title 25, chapter 13; or

(b) if the court finds that the person is unable to pay, order the person to perform community service.

(4) If property is not found in an amount necessary to satisfy the unpaid portion of the fine and if the court makes a written finding that community service is inappropriate, the person shall be imprisoned in the county jail in the county in which the offense has been committed. The imprisonment shall be the number of days that the fine is divisible by the dollar amount of the incarceration credit contained in 46-18-403.

(5) Upon conviction, the court costs or any part of the court costs may be assessed against the defendant in the discretion of the court.

History: **En. Sec. 154, Ch. 263, L. 1955; R.C.M. 1947, 32-21-157; amd. Sec. 3, Ch. 40, L. 1991; amd. Sec. 2, Ch. 109, L. 1991; amd. Sec. 3, Ch. 134, L. 1995.**

Cross-References

County jails, Title 7, ch. 32, part 22.

Allowable court costs, Title 25, ch. 10, part 2.

Classification of offenses, 45-1-201.

Felony defined, 45-2-101.

Misdemeanor defined, 45-2-101.

61-9-512. Violation of rules — penalty. (1) Any violation of any rules adopted by the department is a misdemeanor.

(2) A person convicted of a violation of any standard adopted pursuant to 44-1-1005 shall be fined not less than $25 or more than $500 for the first offense and not less than $25 or more than $1,000 for each subsequent offense.

(3) The penalties provided in subsection (2) apply to any motor carrier that is a corporation subject to the standards adopted pursuant to 44-1-1005. The penalties may be imposed against:

(a) a director or officer of the corporation;

(b) any receiver, trustee, lessee, agent, or person acting for or employed by the corporation; or

(c) any broker of property or officer, agent, or employee thereof.

History: **En. Sec. 119, Ch. 263, L. 1955; amd. Sec. 1, Ch. 233, L. 1959; amd. Sec. 1, Ch. 182, L. 1974; R.C.M. 1947, 32-21-122(part); amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 2, Ch. 386, L. 1987; amd. Sec. 71, Ch. 83, L. 1989.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

61-9-513. Violation of general lighting requirement and slow-moving vehicle provisions — penalty. Any person violating the provisions of 61-9-216 or 61-9-415 shall be subject to penalty as provided in 61-9-511.

History: **En. Sec. 127, Ch. 263, L. 1955; amd. Sec. 1, Ch. 247, L. 1969; R.C.M. 1947, 32-21-130(d).**

61-9-514. Unauthorized use of firefighter's private vehicle — penalty. Any person violating the provisions of 61-9-227 is guilty of a misdemeanor.

History: **En. Sec. 2, Ch. 154, L. 1957; R.C.M. 1947, 32-21-141.2.**

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Unauthorized use of motor vehicles, 45-6-308.

Misdemeanor — no penalty specified, 46-18-212.

61-9-515. Violations of provisions relating to fenders, splash aprons, or flaps — penalty. Any person violating any of the provisions of 61-9-407 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $10 or more than $25.

History: **En. Sec. 1, Ch. 286, L. 1969; R.C.M. 1947, 32-21-149.1(c); amd. Sec. 4, Ch. 40, L. 1991.**

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

61-9-516. Penalty for seatbelt violations. Any person who violates the provisions of 61-9-409 is guilty of a misdemeanor and upon conviction shall be fined not to exceed $100.

History: **En. Sec. 3, Ch. 115, L. 1965; R.C.M. 1947, 32-21-150.3; amd. Sec. 41, Ch. 431, L. 1997.**

61-9-517. Violation of towing requirements — penalty. Any person violating any of the provisions of 61-9-416 shall be deemed guilty of a misdemeanor and subject to a penalty not to exceed $100.

History: **En. Sec. 2, Ch. 201, L. 1959; R.C.M. 1947, 32-21-162.**

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

61-9-518. Violation of motorcycle or quadricycle requirements — penalty. (1) A person convicted of the violation of 61-9-417 shall be fined $5.

(2) A person convicted of the violation of 61-9-418 shall be punished by a fine of not less than $10 or more than $100 for the first conviction. For a second conviction within 1 year, the person shall be punished by a fine of not less than $25 or more than $200. Upon a third or subsequent conviction within 1 year

after the first conviction, the person shall be punished by a fine of not less than $50 or more than $500.

History: **En. Sec. 1, Ch. 398, L. 1973; amd. Sec. 1, Ch. 179, L. 1974; amd. Sec. 1, Ch. 273, L. 1974; amd. Sec. 1, Ch. 54, L. 1977; R.C.M. 1947, 32-21-105.1(3), (4); amd. Sec. 5, Ch. 40, L. 1991.**

Cross-References

Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.
Motorcycle defined, 61-1-105.

61-9-519. Violation of tire restrictions — penalty. A person violating 61-9-406 is guilty of a misdemeanor and is subject to penalty as provided in 61-9-511.

History: **En. Sec. 146, Ch. 263, L. 1955; amd. Sec. 1, Ch. 92, L. 1967; amd. Sec. 1, Ch. 194, L. 1971; amd. Sec. 1, Ch. 192, L. 1973; amd. Sec. 67, Ch. 316, L. 1974; R.C.M. 1947, 32-21-149(e); amd. Sec. 6, Ch. 40, L. 1991.**

Cross-References

Misdemeanor — no penalty specified, 46-18-212.

61-9-520. Penalty. (1) A person violating the provisions of 61-9-406(5) through (7) is guilty of the nonmoving offense of failure to use chains or approved traction devices when required and upon conviction shall be punished by a fine of $25, and no jail sentence may be imposed. Bond for this offense shall be $25.

(2) A violation of 61-9-406(5) through (7) is not a misdemeanor subject to 45-2-101, 61-9-511, 61-9-512, or 61-9-519.

History: **En. Sec. 2, Ch. 448, L. 1991.**

CHAPTER 10

SIZE — WEIGHT — LOAD

Part 1 — Standards, Permits, and Fees

61-10-101. Standards of maximum dimensions, weights, etc.
61-10-102. Width.
61-10-103. Height.
61-10-104. Length — definitions.
61-10-105. Repealed.
61-10-106. Measuring distance between axles.
61-10-107. Maximum gross weight.
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61-10-121. Permits for excess size and weight — agents.
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61-10-130. Custom combiner's special permit — fee — collection — distribution — not transferable.
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61-10-141. Officers authorized to weigh vehicles and require removal of excessive loads — enforcement of motor carrier safety standards — duty to obtain bills of lading for agricultural seeds.
61-10-142. Display of permit.
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61-10-145. Penalties.
61-10-146. Special permits — misrepresentations and violations as misdemeanor.
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61-10-148. Disposition of fines and forfeited bonds.
61-10-149 through 61-10-154 reserved.
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Part 2 — Gross Vehicle Weight Licensing Requirements

61-10-201. Weight fees on motortrucks, truck tractors, and buses.
61-10-202. Repealed.
61-10-203. Alternative gross weight fees on motortrucks and truck tractors with special trailer combinations.
61-10-204. Repealed.
61-10-205. Repealed.
61-10-206. Special fees — certain farm vehicles.
61-10-207. Repealed.
61-10-208. Repealed.
61-10-209. Monthly payment — quarterly payment — penalty for failure to pay fee.
61-10-210. Repealed.
61-10-211. Fees on motortrucks, truck tractors, trailers, and semitrailers from other states.
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61-10-226. Deposit of state highway money.
61-10-227. Blank forms furnished county treasurers.
61-10-228 through 61-10-230 reserved.
61-10-231. Enforcement.
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Part 11 — Multistate Highway Transportation Agreement

61-10-1101. Multistate Highway Transportation Agreement — enactment and text.

Chapter Cross-References

Criminal jurisdiction of Justices' Courts, 3-10-303.

Weights, measures, standards, and labeling, Title 30, ch. 12.

Enforcement of motor carriers law, 44-1-1005.

Regulation of motor carriers, Title 69, ch. 12.

Part 1
Standards, Permits, and Fees

61-10-101. Standards of maximum dimensions, weights, etc. The standards provided for in 61-10-102 through 61-10-104 and 61-10-106 through 61-10-110 govern the maximum dimensions, weights, and other characteristics of motor vehicles operating over the highways in the state to the exclusion of other standards or other requirements respecting the subject matter.

History: En. 32-1123.1 by Sec. 12, Ch. 316, L. 1974; R.C.M. 1947, 32-1123.1; amd. Sec. 1, Ch. 236, L. 1995.

Cross-References

Gross weight fees on motortrucks and truck tractors, 61-10-201.

61-10-102. Width. (1) Except as provided in subsection (2), a vehicle, including a bus, unloaded or with load, may not have a total outside width in excess of 102 inches. This width for buses is allowed only on paved highways 20 feet or more in width.

(2) (a) Subsection (1) does not apply to an implement of husbandry or a vehicle used for hauling hay that is moved or propelled upon the highway during daylight hours for a distance of not more than 100 miles if the movement is incidental to the farming operations of the owner of the implement of husbandry or the vehicle used for hauling hay. If the implement or vehicle is more than 12 1/2 feet wide, it must be preceded by flag vehicle escorts to warn other highway users. This restriction does not apply to dual-wheel tractors under 15 feet overall width that are used in farming operations or to movement on a county road within 100 miles of the farming operation of the owner of an implement of husbandry or a vehicle used for hauling hay. Lights that meet the requirements of 61-9-219(4) must be displayed on the rear of the implement of husbandry or vehicle used for hauling hay. However, if the highway passes through a hazardous area, the implements or vehicles must be preceded and followed by flag vehicle escorts unless the movement of the implements or vehicles is restricted to a county road within 100 miles of the farming operation of the owner.

(b) An implement of husbandry or a vehicle used for hauling hay that exceeds 16 1/2 feet in width and that is traveling on an interstate or a four-lane highway must be followed by a flag vehicle escort.

(c) A commercial vehicle that is hauling hay but does not qualify under subsection (2)(a) may be granted a permit subject to the provisions of 61-10-121 through 61-10-127 and the following requirements:

(i) travel during daylight hours only for an oversize shipment of large round bales of hay, whether the vehicle is loaded or with an empty hay rack, up to 144 inches; when empty, a square red or orange flag measuring 12 inches on each side must be attached to each corner of the hay rack; and

(ii) travel day or night for any other shipment of baled hay, whether the vehicle is loaded or with an empty hay rack, up to 114 inches.

(d) Subsection (1) does not apply to a commercial hay grinder moved or propelled upon the highway during daylight hours for a distance of not more than 100 miles if the movement is incidental to operations of the commercial hay grinder. A commercial hay grinder exceeding 102 inches in width must have a permit issued under 61-10-124. If the commercial hay grinder is more than 12 ½ feet wide, it must be preceded by flag vehicle escorts to warn other highway users. Lights that meet the requirements of 61-9-219(4) must be displayed on the rear of the commercial hay grinder. Movement of a commercial hay grinder that does not exceed 138 inches in width may occur on any day of the week, including holidays, and is restricted to movement during daylight hours. Movement of a commercial hay grinder may not exceed the posted speed limit, including the speed limit on an interstate highway.

(3) A safety device that the department determines by rule adopted pursuant to 61-9-504 to be necessary for safe and efficient operation of motor vehicles is not included in the calculation of width provided in subsection (1).

(4) For the purposes of this section, "county road" has the same meaning as the term is defined in 60-1-103.

History: En. 32-1123.3 by Sec. 14, Ch. 316, L. 1974; amd. Sec. 1, Ch. 314, L. 1975; R.C.M. 1947, 32-1123.3; amd. Sec. 74, Ch. 421, L. 1979; amd. Sec. 1, Ch. 109, L. 1983; amd. Sec. 1, Ch. 340, L. 1989; amd. Sec. 1, Ch. 413, L. 1993; amd. Sec. 1, Ch. 283, L. 1997; amd. Sec. 2, Ch. 449, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 449 inserted (2)(b) requiring that an implement of husbandry or hay-hauling vehicle over 16 ½ feet wide be followed by a flag vehicle escort when traveling on an interstate or other four-lane highway; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Highway patrol — enforcement of motor carriers law, 44-1-1005.

Bus defined, 61-1-115.

Implement of husbandry defined, 61-1-121.

Flag person defined, 61-1-411.

61-10-103. Height. A vehicle, unladen or with load, may not exceed a height of 14 feet.

History: En. 32-1123.4 by Sec. 15, Ch. 316, L. 1974; R.C.M. 1947, 32-1123.4; amd. Sec. 1, Ch. 73, L. 1987.

61-10-104. Length — definitions. (1) A single truck, bus, or self-propelled vehicle, unladen or with load, may not have an overall length, inclusive of front and rear bumpers, in excess of 55 feet.

(2) (a) When used in a truck tractor-semitrailer combination, the semitrailer may not exceed 53 feet in length, excluding those portions not designed to carry a load, except as provided by 61-10-124. When used in a truck tractor-semitrailer-trailer or a truck tractor-semitrailer-semitrailer combination, the semitrailer and trailer or the two semitrailers may not exceed 28 ½ feet each in length or 61 feet in combined trailer length, excluding those portions not designed to carry a load, except as provided by 61-10-124. Truck tractor-semitrailer, truck tractor-semitrailer-trailer, and truck tractor-semitrailer-semitrailer combinations are not subject to a combination length limit.

(b) A stinger-steered automobile or boat transporter may not exceed 75 feet in length plus a maximum 3 feet of front overhang and 4 feet of rear overhang, except as provided by 61-10-124. "Stinger-steered automobile or boat transporter" means a truck tractor-semitrailer combination that has a fifth wheel on a drop frame located behind and below the rear axle of the truck tractor and that is designed and used for the transportation of vehicles or assembled boats or boat hulls.

(c) All other combinations of vehicles may not have a combination length in excess of 75 feet, except as provided by 61-10-124. If the combination consists of more than two units, the rear units of the combination must be equipped with breakaway brakes.

(3) A motor vehicle may not tow more than one motor vehicle, and a motor vehicle may not draw more than three motor vehicles attached to it by the triple saddle-mount method (that is, by mounting the front wheels of one vehicle on the bed of another, leaving only the rear wheels of the vehicle in contact with the roadway), and this combination may not have a combination length in excess of 75 feet.

(4) A passenger vehicle or truck of less than 2,000 pounds "manufacturers' rated capacity" may not tow more than one trailer or semitrailer, and this combination may not have a length in excess of 65 feet.

(5) (a) The length of a vehicle combination consisting of a truck or truck-tractor and one pole trailer or semitrailer hauling raw logs may not exceed 75 feet in overall length. As used in this subsection (5)(a), the term "length" means the total length of the vehicle combination beginning at the front of the front bumper of the truck or truck-tractor and extending to the most distant end of the logs being hauled. A term permit for an overlength vehicle combination, as provided in 61-10-124(2), does not apply to the vehicle combination described in this subsection (5)(a). A vehicle combination exceeding 75 feet must have a trip permit.

(b) The maximum overhang of any log may not exceed 15 feet, except by special, single-trip permit. Overhang is measured from the center of the rear-most axle to the most distant end of the logs being hauled.

(c) The provisions in subsections (5)(a) and (5)(b) do not apply to a vehicle combination hauling utility poles.

(6) As used in this chapter, the following definitions apply:

(a) "Combination length" means the total length of a combination of vehicles, such as a truck tractor-semitrailer-trailer combination, measured from the front bumper of the motor vehicle to the back bumper or rear extremity of the last trailer, including the connection tongues.

(b) "Combined trailer length" means the total length of a combination of trailers measured from the front of the first trailer to the back of the last trailer, including the connection tongues and loads.

(c) "Length", except as provided in subsection (5)(a), means the total longitudinal dimension of a single vehicle, a trailer, or a semitrailer. The length of a trailer or semitrailer is measured from the front of the cargo-carrying unit to its rear, exclusive of safety or energy efficiency devices, air-conditioning units, air compressors, flexible fender extensions, splash and spray suppressant devices, bolsters, mechanical fastening devices, and hydraulic lift gates.

(d) "Rocky Mountain double" means a combination of vehicles that includes a truck tractor pulling a long semitrailer and a shorter trailer.

History: En. 32-1123.5 by Sec. 16, Ch. 316, L. 1974; amd. Sec. 1, Ch. 20, L. 1975; R.C.M. 1947, 32-1123.5; amd. Sec. 2, Ch. 40, L. 1981; amd. Sec. 1, Ch. 487, L. 1983; amd. Sec. 1, Ch. 121, L. 1989; amd. Sec. 1, Ch. 327, L. 1991; amd. Sec. 1, Ch. 672, L. 1991; amd. Sec. 1, Ch. 423, L. 1993; amd. Sec. 1, Ch. 209, L. 1995; amd. Sec. 1, Ch. 313, L. 1995; amd. Sec. 1, Ch. 58, L. 1997; amd. Sec. 2, Ch. 232, L. 1997.

Cross-References

Truck defined, 61-1-107.

Truck tractor defined, 61-1-108.

Trailer defined, 61-1-111.

Semitrailer defined, 61-1-112.
Dolly or converter gear defined, 61-1-113.
Bus defined, 61-1-115.
Lamp or flag on projecting load, 61-9-213.

61-10-105. Repealed. Sec. 14, Ch. 236, L. 1995.

History: En. 32-1123.6 by Sec. 17, Ch. 316, L. 1974; R.C.M. 1947, 32-1123.6; amd. Sec. 1, Ch. 366, L. 1981.

61-10-106. Measuring distance between axles. The distance between axles shall be measured to the nearest foot. When a fractional measurement is exactly one-half foot, the next larger whole number shall be used.

History: En. 32-1123.8 by Sec. 19, Ch. 316, L. 1974; R.C.M. 1947, 32-1123.8.

Cross-References

Systems of weights and measures, 30-12-102.

Axle defined, 61-1-128.

61-10-107. Maximum gross weight. (1) An axle may not carry a load in excess of 20,000 pounds, and no two consecutive axles more than 40 inches or less than 96 inches apart may carry a load in excess of 34,000 pounds. An axle load is the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle. For purposes of this section, axles 40 inches or less apart are considered to be a single axle. A vehicle or combination may not have more than nine axles. The maximum gross weight allowed on a vehicle, group of axles, or combination of vehicles must be determined by the formula:

$$W = 500((LN/(N - 1)) + 12N + 36)$$

in which W equals gross weight, L equals wheel base in feet, and N equals number of axles, except that two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each if the overall distance between the first and last axles of the consecutive sets of tandem axles is 36 feet or more.

(2) (a) Notwithstanding a vehicle's conformance with the requirements of subsection (1), except for the steering axle, all axles weighing over 11,000 pounds must have at least four tires or have wide-base tires. The maximum load on an axle, other than a steering axle, equipped with wide-base tires is limited to 500 pounds for each inch of tire width.

(b) The provisions of subsection (2)(a) do not apply to passenger buses.

(c) For the purposes of this section, wide-base tires are tires that are 14 or more inches in nominal width. The maximum tire weight limit is computed for wide-base tires based on the number of inches shown on the tire marking, or if the tire marking is shown by metric size, the tire weight limit is computed by conversion of the metric size.

(3) This section does not apply to highways that are a part of the national system of interstate and defense highways (as referred to in 23 U.S.C. 127) when application of this section would prevent this state from receiving federal funds for highway purposes.

History: En. 32-1123.7 by Sec. 18, Ch. 316, L. 1974; R.C.M. 1947, 32-1123.7; amd. Sec. 3, Ch. 40, L. 1981; amd. Sec. 2, Ch. 366, L. 1981; amd. Sec. 1, Ch. 392, L. 1981; amd. Sec. 2, Ch. 487, L. 1983; amd. Sec. 3, Ch. 474, L. 1987; amd. Sec. 1, Ch. 235, L. 1989; amd. Sec. 49, Ch. 16, L. 1991; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 1, Ch. 399, L. 1993; amd. Sec. 2, Ch. 236, L. 1995; amd. Sec. 3, Ch. 232, L. 1997.

Cross-References

Classification — highways and roads, 60-1-201.

Department of Transportation — general powers and duties, Title 60, ch. 2, part 2.

Axle defined, 61-1-128.

61-10-108. Reduction under special circumstances. The maximum axle and axle group loads stated in 61-10-107 are subject to reasonable reduction in the discretion of the department of transportation during periods when road subgrades have been weakened by water saturation or other causes.

History: En. 32-1123.9 by Sec. 20, Ch. 316, L. 1974; R.C.M. 1947, 32-1123.9; amd. Sec. 117, Ch. 370, L. 1987; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 3, Ch. 236, L. 1995.

61-10-109. Operation without special permits prohibited. The operation of vehicles or combinations of vehicles having dimensions or weights in excess of the maximum limits specified in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-108 is permitted only if authorized by special permit issued under 61-10-121 through 61-10-125 by the department of transportation or its agents or the highway patrol.

History: En. 32-1123.10 by Sec. 21, Ch. 316, L. 1974; R.C.M. 1947, 32-1123.10; amd. Sec. 75, Ch. 421, L. 1979; amd. Sec. 4, Ch. 40, L. 1981; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 4, Ch. 236, L. 1995; amd. Sec. 4, Ch. 232, L. 1997.

Cross-References

Highway patrol, Title 44, ch. 1.

Department of Transportation — general powers and duties, Title 60, ch. 2, part 2.

61-10-110. Federal law. Sections 61-10-101 through 61-10-104 and 61-10-106 through 61-10-109 do not authorize, without a permit issued as provided by law, the operation of a combination of vehicles having a gross weight, axle load, or size in excess of that authorized in those sections or the operation on the national system of interstate and defense highways of a combination of vehicles having a gross weight or size in excess of the maximum weight and size permitted by law in this state before July 1, 1956, or permitted by federal law or regulation. If federal law allows establishment of weight and size limits in excess of the allowable limits permitted in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-109, without penalty or denial of federal funds for highway purposes, the department of transportation may, by permit designating highway routing, authorize the movement on highways under its jurisdiction of vehicles or combinations of vehicles of a weight or size in excess of the limits provided for in those sections, but within the limits necessary to qualify for federal-aid highway funds.

History: En. 32-1123.11 by Sec. 22, Ch. 316, L. 1974; R.C.M. 1947, 32-1123.11; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 5, Ch. 236, L. 1995.

Cross-References

Federal-aid highway funds, Title 60, ch. 3, part 1.

Gross weight fees on motortrucks and truck tractors, 61-10-201.

61-10-111 and 61-10-112 reserved.

61-10-113. Issuance of permits for overweight and oversize loads — interstate agreements. The department of transportation may enter into agreements with other states to provide for the issuance of permits for overweight and oversize loads, as authorized by the laws and rules of each state.

History: En. Sec. 1, Ch. 24, L. 1991; amd. Sec. 3, Ch. 512, L. 1991.

61-10-114 through 61-10-120 reserved.

61-10-121. Permits for excess size and weight — agents. (1) (a) Upon application and with good cause shown, the department of transportation, or its agent under subsection (3), and local authorities in their respective jurisdictions may issue telephonically or in writing a special permit authorizing the applicant to operate or move a vehicle, combination of vehicles, load, object, or other thing of a size or weight exceeding the maximum specified in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110 upon a highway under the jurisdiction of and for the maintenance of which the body granting the permit is responsible. However, only the department may issue permits for movement of a vehicle or combination of vehicles carrying built-up or reducible loads in excess of 9 feet in width or exceeding the length, height, or weight specified in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110. This permit must be issued in the public interest. A carrier receiving this permit must have public liability and property damage insurance for the protection of the traveling public as a whole. A permit may not be issued for a period greater than the period for which the GVW license is valid, including grace periods, as provided in this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit.

(b) The department may issue to dealers in implements of husbandry and self-propelled machinery oversize permits. The permits may be transferred from unit to unit by the dealer, for the fee set forth in 61-10-124. These oversize permits may not restrict dealers in implements of husbandry and self-propelled machinery from traveling on a Saturday or Sunday and expire on December 31 of each year, with no grace period. For the purposes of this section, a dealer in implements of husbandry or self-propelled machinery must be a resident of the state. A post-office box number is not a permanent address under this section.

(2) The applicant for a special permit shall specifically describe the powered vehicle or towing vehicle and generally describe the type of vehicle, combination of vehicles, load, object, or other thing to be operated or moved and the particular state highways over which the vehicle, combination of vehicles, load, object, or other thing is to be moved and whether the permit is required for a single trip or for continuous operation.

(3) The department may enter into a contract with a private party to act as an agent of the department for the purpose of issuing, in writing, a special permit allowed under this section.

History: En. 32-1127.1 by Sec. 27, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.1; amd. Sec. 76, Ch. 421, L. 1979; amd. Sec. 1, Ch. 595, L. 1979; amd. Sec. 1, Ch. 166, L. 1991; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 1, Ch. 71, L. 1995; amd. Sec. 6, Ch. 236, L. 1995.

Cross-References

Municipal regulation of motor vehicles, 7-14-4103.

Casualty insurance, Title 33, ch. 23.

Mandatory liability protection, Title 61, ch. 6, part 3.

Offenses for which arrest authorized, 61-12-206.

61-10-122. Discretion of issuer — conditions. The department of transportation or local authority may issue or withhold a special permit at its discretion or, if the permit is issued, limit the number of trips or establish seasonal or other time limitations within which the vehicle, combination of vehicles, load, object, or other thing described may be operated on the public highways indicated, or otherwise limit or prescribe conditions of operation of the vehicle, combination of vehicles, load, object, or other thing when necessary to assure against damage to the road foundation, surfaces, or structures or safety of traffic, and may require an undertaking or other security considered necessary to compensate for injury to a roadway or road structure. During harvest no permit may be denied to oversize harvest or harvest-related agricultural machinery solely on the grounds that the travel takes place on a Saturday or Sunday. No permit may be denied to dealers in implements of husbandry and self-propelled machinery solely on the grounds that the travel may take place on a Saturday or Sunday.

History: En. 32-1127.2 by Sec. 28, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.2; amd. Sec. 2, Ch. 595, L. 1979; amd. Sec. 118, Ch. 370, L. 1987; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Implement of husbandry defined, 61-1-121.

Transportation of vehicles, Title 61, ch. 4, part 3.

61-10-123. Haystack movers. A self-propelled vehicle used only for the purpose of moving haystacks on a commercial basis is subject to 61-10-121 through 61-10-127, except as follows:

(1) The vehicle, loaded or unloaded, may not exceed 55 feet in length or 20 feet in width.

(2) A single load may not be moved on the vehicle a distance greater than 75 miles from the point of origin on public roads.

(3) When the vehicle is hauling a load, it shall be accompanied by two pilot cars. Each car shall be equipped with a flashing warning light, a red flag, and a sign with the words "wide load" written on it. One car shall precede the vehicle by not less than 100 yards or more than one-fourth mile, and one shall follow the vehicle at a distance not less than 100 yards or more than one-fourth mile. The following pilot car shall be in radio contact with the vehicle at all times.

(4) The speed of the vehicle shall be reasonable and proper but not in excess of 35 miles per hour.

(5) The vehicle shall be operated only between the hours of sunrise and sunset.

(6) The vehicle may not be operated on an interstate or controlled-access highway.

(7) A term or blanket permit may be issued for the vehicle.

History: En. 32-1127.4 by Sec. 30, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.4.

Cross-References

Controlled-access highway defined, 61-1-211.

Special speed limitations, 61-8-313.

61-10-124. Special permits — fees. (1) Except as provided in subsections (2)(b), (2)(d), and (4), in addition to the regular registration and gross vehicle weight fees, a fee of $10 for each trip permit and a fee of $75 for each term permit issued for size in excess of that specified in 61-10-101 through 61-10-104 must be paid for all movements under special permits on the public highways under the jurisdiction of the department of transportation.

(2) (a) Except as provided in subsections (2)(b), (2)(d), (2)(f), (4), and (5), term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet; an overlength

vehicle, combination of vehicles, load, object, or other thing in excess of 95 feet; or an overheight vehicle, combination of vehicles, load, or other thing in excess of 14 feet or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits. A Rocky Mountain double may not exceed 81 feet in combined trailer length. A Rocky Mountain double is not subject to a combination length limit. Special permits for vehicle combinations of more than two trailers or more than two units designed for or used to carry a load are not permitted except as provided in subsections (4) and (5). Special permits for vehicle combinations may specify and special permits under subsections (4) and (5) must specify highway routing and otherwise limit or prescribe conditions of operation of the vehicle or combination, including but not limited to required equipment, speed, stability, operational procedures, and insurance.

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (2)(a). The fee for this permit is $75. This permit expires on December 31 of each year, with no grace period.

(c) With payment of the appropriate gross weight fees required by 61-10-201 and with payment of the fee prescribed in subsection (1), allowable gross weight of a five-axle combination logging vehicle is 80,000 pounds.

(d) A term permit may be issued for any combination of vehicles that exceeds 95 feet in length but does not exceed 100 feet in combination length, except a truck-trailer-trailer or a truck tractor-semitrailer-trailer-trailer combination, for travel only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, or on other highways within a 2-mile radius of an interchange on the interstate system in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange. The fee for this permit is $125.

(e) A term permit may be issued for a truck tractor-semitrailer combination when the semitrailer exceeds 53 feet in length but does not exceed 57 feet in length.

(f) (i) An annual permit may be issued for nondivisible loads up to 120 feet in length. The fee for this permit is $125.

(ii) Portions of a nondivisible load hauled on a public road off of the interstate highway may be detached and reloaded on the same hauling unit if the separate pieces are necessary to the operation of the machine or equipment that is being hauled and if the arrangement does not exceed limits for which a permit may be issued.

(iii) An applicant for a nondivisible load permit for use as provided in subsection (6)(b) is responsible for providing information regarding the number of work hours required to dismantle the load.

(iv) For use as provided in subsection (6)(b) and for the purposes of this section, emergency response vehicles and casks designed and used for the transport of spent nuclear materials are considered nondivisible loads.

(3) Except as provided in subsection (2)(b), a permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department

of transportation, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit.

(4) The department may issue special permits to the operating company for a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles under the following conditions:

(a) the combination may be operated only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, and within a 2-mile radius of an interchange on the interstate system on other highways only in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange.

(b) a combination of vehicles powered by a cab-over (tilt cab) type truck-tractor or a truck may not exceed overall length of 105 feet, inclusive of front and rear bumpers and overhang;

(c) a combination of vehicles powered by a conventional truck-tractor may not exceed overall length of 110 feet, inclusive of front and rear bumpers and overhang;

(d) an individual cargo unit of the combination may not exceed 28 1/2 feet in length and 102 inches in width;

(e) gross weight fees under 61-10-203 must be paid on the truck or truck tractor for the declared registered gross weight of the special vehicle combination, but not to exceed the formula in 61-10-107;

(f) the combination must have a special overlength permit issued at a fee of $200 for a term permit or $20 for each trip permit;

(g) travel of the combination may be restricted to specific routes, hours of operation, specific days, or seasonal periods; and

(h) the department may enforce any other restrictions determined by the department to be necessary. The permit is not transferable, and the fee for the permit is $200.

(5) The department of transportation may issue special permits under subsection (4) for vehicle combinations that consist of a truck-trailer-trailer if:

(a) the vehicle combination's overall length, inclusive of front and rear bumpers, is not more than 95 feet; and

(b) the person, firm, or corporation applying for the permit:

(i) restricts truck-trailer-trailer operations authorized by the permit to the hauling of talc ore, chlorite, dolomite, limestone, and custom combine equipment;

(ii) operated the truck-trailer-trailer combination before July 1, 1987;

(iii) restricts the truck-trailer-trailer operations authorized by the permit to the specified routes that those vehicles used before July 1, 1987; and

(iv) provides the department of transportation with an affidavit confirming the routes used before July 1, 1987, for truck-trailer-trailer operations.

(6) For the purposes of this section, a "nondivisible load" is:

(a) on public roads off of interstate highways, a load that cannot be readily or reasonably dismantled and that is reduced to a minimum practical size and weight;

(b) on interstate highways, a load or vehicle exceeding applicable length or weight limits that, if separated into smaller loads or vehicles, would:

(i) compromise the intended use of the vehicle;

(ii) destroy the value of the load or vehicle; or

(iii) require more than 8 work hours to dismantle using appropriate equipment.

History: (1)En. Sec. 1, Ch. 248, L. 1987; (2) thru (4)En. 32-1127.3, 32-1127.5 by Secs. 29, 31, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.3, 32-1127.5(part); amd. Sec. 77, Ch. 421, L. 1979; amd. Sec. 3, Ch. 595, L. 1979; amd. Sec. 5, Ch. 40, L. 1981; amd. Sec. 1, Ch. 462, L. 1983; amd. Sec. 3, Ch. 487, L. 1983; amd. Sec. 2, Ch. 73, L. 1987; amd. Sec. 2, Ch. 248, L. 1987; amd. Sec. 119, Ch. 370, L. 1987; amd. Sec. 2, Ch. 474, L. 1987; amd. Sec. 2, Ch. 437, L. 1989; amd. Sec. 1, Ch. 320, L. 1991; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 2, Ch. 672, L. 1991; amd. Sec. 11, Ch. 575, L. 1993; amd. Sec. 1, Ch. 621, L. 1993; amd. Sec. 7, Ch. 236, L. 1995; amd. Sec. 1, Ch. 312, L. 1995; amd. Sec. 5, Ch. 232, L. 1997; amd. Sec. 1, Ch. 317, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 317 in (2)(a) at end of third sentence deleted "and the long semitrailer cargo unit of the combination may not exceed 48 feet in length"; inserted (2)(f) regarding nondivisible loads; inserted (6) defining a nondivisible load; and made minor changes in style. Amendment effective April 16, 1999.

Cross-References

Interstate cooperative agreements for collection of taxes and fees, 60-2-311.

Implement of husbandry defined, 61-1-121.

Public highway defined, 61-1-202.

Transportation of vehicles, Title 61, ch. 4, part 3.

61-10-125. Other fees. (1) There is charged for a single trip permit for a load that is over the gross allowable load provided for by the formula in 61-10-107(1) but that does not exceed axle limits set forth in 61-10-107(1):

(a) $10 for distances to and including 100 miles;

(b) $30 for distances from 101 to 199 miles; and

(c) $50 for distances over 200 miles traveled.

(2) (a) There is charged a fee of:

(i) $200 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 5,000 pounds in excess axle weight;

(ii) $500 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 10,000 pounds in excess axle weight, with no single axle exceeding 5,000 pounds in excess axle weight;

(iii) $750 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 15,000 pounds in excess axle weight, with no single axle exceeding 5,000 pounds in excess axle weight;

(iv) $1,000 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 20,000 pounds in excess axle weight, with no single axle exceeding 5,000 pounds in excess axle weight and no tandem axle exceeding 15,000 pounds in excess axle weight.

(b) The fees provided in subsection (2)(a) are annual fees but may be prorated on a quarterly basis and may be paid quarterly, semiannually, or annually. However, if the fee is paid other than annually, there is an additional fee of $10 each time a fee is paid.

(c) A permit issued under this subsection (2) is valid for a period of no less than 1 calendar quarter and no more than 1 calendar year.

(d) The department or its agent may not issue a term permit for loads that exceed 10,000 pounds in excess axle weight unless the person applying for the term permit has obtained approval from the department, through a weight analysis, for the configuration of the vehicle.

(3) There is charged for a permit to move a load that exceeds the single axle, tandem axle, or axle group limits set forth in 61-10-107(1) the following fee based upon the sum of excess in axle or axle group weights:

Total Excess Axle Weight (pounds)	Calculated Cost of 25 Miles of Travel (dollars)
5,000	3.50
10,000	7.00
15,000	10.50
20,000	14.00
25,000	17.50
30,000	21.00
35,000	24.50
40,000	28.00
45,000	31.50
50,000	35.00
55,000	38.50
60,000	42.00
65,000	45.50
70,000	49.00
75,000	52.50
80,000	56.00
85,000	59.50
90,000	63.00
95,000	66.50
100,000	70.00
over 100,000	70.00 + 3.50 per 5,000 lbs. or part of 5,000 lbs. in excess of 100,000 lbs.

(4) For purposes of subsection (3):

(a) mileage must be rounded off in units of 25 miles and mileage in excess of a 25-mile increment must be assessed at the next higher 25-mile increment; and

(b) weight must be rounded off in 5,000-pound increments and weight in excess of a 5,000-pound increment must be assessed at the next higher 5,000-pound increment.

(5) A vehicle must be licensed to the maximum allowable weight authorized under 61-10-107 before an overweight permit may be issued.

History: En. 32-1127.5 by Sec. 31, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.5(part); amd. Sec. 6, Ch. 40, L. 1981; amd. Sec. 1, Ch. 571, L. 1993; amd. Sec. 2, Ch. 71, L. 1995.

Cross-References

Interstate cooperative agreements for collection of taxes and fees, 60-2-311.

61-10-126. Deposit of fees. All fees collected under 61-10-101 through 61-10-104 and 61-10-106 through 61-10-125 must be forwarded to the state treasurer for deposit in the highway nonrestricted account in the state special revenue fund.

History: En. 32-1127.10 by Sec. 36, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.10; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 8, Ch. 236, L. 1995; amd. Sec. 58, Ch. 509, L. 1995.

Cross-References

Highway revenue nondiversion, Art. VIII, sec. 6, Mont. Const.

General fiscal duties of State Treasurer, 17-1-111.

Fund structure, 17-2-102.

61-10-127. Permits issued to governmental entities. Permits issued to the United States government, states, counties, cities, and their political subdivisions shall be issued without fee for a term beginning with the date of issuance and expiring December 31.

History: En. 32-1127.6 by Sec. 32, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.6.

Cross-References

Public-owned vehicles exempt from license or registration fees, 61-3-321.

61-10-128. When authorities may restrict right to use roadway. (1) A local authority may not alter the limitations provided in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110 or substitute other limitations or requirements, except as provided in this section.

(2) The department of transportation by order, or a local road authority by ordinance or resolution, may prohibit the operation of or impose restrictions on the weight and speed of a vehicle traveling on a public highway under its respective jurisdiction and for which it is responsible for maintenance whenever the highway will be seriously damaged or destroyed by deterioration, rain, snow, or other climatic conditions, unless the use of vehicles on the highway is prohibited or the permissible vehicle weights and speed are reduced. The department of transportation or the authority that enacts the ordinance or resolution shall erect signs designating the department's order or the authority's ordinance or resolution at each end of that portion of the highway affected, and the order, ordinance, or resolution is not effective until the signs are erected. The department of transportation or the authority by ordinance or resolution may prohibit the operation of trucks or other commercial vehicles or impose limitations on their weight on designated highways, subject to the provisions of subsection (3). These prohibitions and limitations must be designated by appropriate signs placed on the highways.

(3) Neither the department of transportation nor a local authority may prohibit the operation of or impose a restriction on the weight of a vehicle loaded with perishable seed potatoes that is traveling on a public highway if:

(a) the vehicle is being operated within its legal licensed gross vehicle weight;

(b) the driver possesses a federal-state inspection certificate issued for the load; and

(c) the vehicle takes the most direct route from the point of loading to the nearest nonrestricted road.

History: (1)En. 32-1123.12 by Sec. 23, Ch. 316, L. 1974; Sec. 32-1123.12, R.C.M. 1947; (2)En. Sec. 7, Ch. 171, L. 1931; re-en. Sec. 1751.7, R.C.M. 1935; amd. Sec. 6, Ch. 184, L. 1939; amd. Sec. 37, Ch. 316, L. 1974; Sec. 32-1128, R.C.M. 1947; R.C.M. 1947, 32-1123.12, 32-1128; amd. Sec. 1, Ch. 57, L. 1981; amd. Sec. 120, Ch. 370, L. 1987; amd. Sec. 1, Ch. 468, L. 1987; amd. Sec. 1, Ch. 476, L. 1991; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 1, Ch. 57, L. 1993; amd. Sec. 9, Ch. 236, L. 1995; amd. Sec. 6, Ch. 232, L. 1997.

Cross-References

Municipal ordinances, 7-5-4201.

Truck defined, 61-1-107.

Traffic regulation provisions uniform throughout state — power of local authorities, 61-8-103.

Department of Transportation to sign all state highways, 61-8-203.

When local authorities may and shall alter limits, 61-8-310.

Powers of local authorities to regulate traffic, 61-12-101.

61-10-129. Rules regarding overlength vehicles. The department of transportation may adopt rules to implement 61-10-124 and may by rule prescribe standards for the qualifications of drivers operating special vehicle combinations under 61-10-124 and for the equipping and operation of such combinations to enhance highway traffic safety.

History: En. Sec. 5, Ch. 474, L. 1987; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 3, Ch. 672, L. 1991.

61-10-130. Custom combiner's special permit — fee — collection — distribution — not transferable. (1) In lieu of the taxes required by 15-24-301 and in lieu of motor vehicle license fees, gross vehicle weight fees, and overwidth, overlength, and overheight permits provided for in Title 61, a nonresident engaged in the business of custom combining who brings equipment into the state may pay a special permit fee of $40 per unit. A unit shall include:

(a) one truck suitable for hauling grain;

(b) one header trailer or one combine trailer; and

(c) pickup trucks and all other equipment, except combines, used by a nonresident and brought into the state as part of his business of custom combining.

(2) In lieu of gross vehicle weight fees and overwidth, overlength, and overheight permits, Montana residents engaged in the business of custom combining may pay the annual farm gross vehicle weight fees and a special permit fee of $20 per unit. A unit includes:

(a) one truck suitable for hauling grain;

(b) one header trailer or one combine trailer; and

(c) pickup trucks used by the resident in his business of custom combining.

(3) When used to transport agricultural products, a truck authorized to be used under a custom combiner's special permit may be operated only within a 50-mile radius from the harvested field to the point of first unloading. The truck may not haul agricultural products from one commercial elevator to another commercial elevator. The truck may be operated on any highway, except a highway that is part of the federal-aid interstate system, without incurring excess weight penalties under 61-10-145 if the total gross weight of the truck does not exceed allowable weight limitations by more than 20% per axle and the maximum load per inch of tire width does not exceed 670 pounds. The truck may not be operated in excess of 40 miles per hour. No trip permit is required. If the truck exceeds the tolerance provided under this subsection, the fine or penalty imposed applies to all weight over the legal limit allowed by 61-10-107.

(4) A combine trailer authorized to be used under subsection (1)(b) or (2)(b) may be operated under the same limitations and until July 1, 1991, may be operated within the same tolerances granted trucks under subsection (3), except that the 50-mile limitation does not apply and the combine trailer may be used upon any highway of the state, including a highway that is part of the federal-aid interstate system. If the combine trailer exceeds the tolerance

provided under subsection (3), the fine or penalty imposed applies to all weight over the legal limit allowed by 61-10-107.

(5) The fee required by this section must be collected by the department of transportation. Upon payment of the fee, the department of transportation must provide an identifying device to be displayed on each truck, header trailer, or combine trailer and other equipment used by the nonresident or resident in his business of custom combining in the state, which device is valid for the calendar year in which the fee is collected.

(6) All fees collected under this section must be distributed not later than January 31 immediately following the period of license as follows: 62 ½% to the county general fund in the county in which the permittee declares the greatest amount of time will be spent to operate, 37 ½% to the state special revenue fund for the department of transportation.

(7) The identifying devices and fee paid for each unit are not transferable from one vehicle to another or transferable on the sale or change of ownership.

(8) The department of transportation may adopt rules, as provided in Title 2, chapter 4, to implement the provisions of this section.

History: En. 84-6015 by Sec. 1, Ch. 371, L. 1974; amd. Sec. 1, Ch. 50, L. 1975; R.C.M. 1947, 84-6015; amd. Sec. 1, Ch. 206, L. 1979; amd. Sec. 19, Ch. 581, L. 1979; amd. Sec. 2, Ch. 48, L. 1983; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 8, Ch. 20, L. 1985; amd. Sec. 1, Ch. 183, L. 1989; Sec. 15-24-1001, MCA 1987; redes. 61-10-130 by Sec. 3, Ch. 183, L. 1989; amd. Sec. 3, Ch. 512, L. 1991.

61-10-131 through 61-10-140 reserved.

61-10-141. Officers authorized to weigh vehicles and require removal of excessive loads — enforcement of motor carrier safety standards — duty to obtain bills of lading for agricultural seeds. (1) A peace officer, officer of the highway patrol, or employee of the department of transportation may weigh any vehicle regulated by 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110, except recreational vehicles as defined in 61-1-132, by means of either portable or stationary scales, and may require that the vehicle be driven to the nearest scales if those scales are within 2 miles. That person may then require the driver to unload at a designated facility that portion of the load necessary to decrease the weight of the vehicle to conform to the maximum allowable weights specified in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110. If the excess weight does not exceed 10,000 pounds, an excess weight permit may be issued in accordance with 61-10-121. The permit authorizes the driver of the excess weight load to proceed to a designated facility where the load can be safely reduced to legal limits.

(2) Commodities and material unloaded as required by this section must be cared for by the owner or operator of the vehicle at the risk of that owner or operator. Commodities or material unloaded as required by this section may not be left on the highway right-of-way.

(3) The department of transportation may establish, maintain, and operate weigh stations, either intermittently or on a continuous schedule, and may require vehicles, except passenger cars and pickup trucks under 14,000 pounds GVW and recreational vehicles as defined in 61-1-132 (that are not new or used recreational vehicles traveling into or through Montana for delivery to a distributor or a dealer), to enter for the purpose of weighing and inspection

for compliance with all laws pertaining to their operation and safety requirements. The department may require vehicles over 10,000 pounds to be inspected and weighed by portable scale crews.

(4) The department of transportation shall work with the highway patrol in the enforcement of safety standards adopted pursuant to 44-1-1005. For the purposes of the joint enforcement, the highway patrol is designated as the lead agency. The highway patrol and the department of transportation shall cooperate to ensure minimum duplication and maximum coordination of enforcement effort.

(5) In order to enforce compliance with safety standards adopted pursuant to 44-1-1005, the department of transportation shall designate employees as peace officers. The designated employees must be employed in the administration of the motor carrier services functions of the department of transportation. Each employee designated as a peace officer may:

(a) issue citations and make arrests in connection with violations of safety standards adopted under 44-1-1005;

(b) issue summons;

(c) accept bail;

(d) serve warrants for arrest;

(e) make reasonable inspections of cargo carried by commercial motor vehicles;

(f) make reasonable safety inspections of commercial motor vehicles used by motor carriers; and

(g) require production of documents relating to the cargo, driver, routing, or ownership of the commercial motor vehicles.

(6) In addition to other enforcement duties assigned under this section, an employee of the department of transportation has:

(a) the same authority to enforce provisions of the motor carriers law as that granted the public service commission under 69-12-203; and

(b) the duty to secure or make copies, or both, of all bills of lading or other evidence of delivery for shipment of agricultural seeds as defined in 80-5-120 that have been sold or are intended for sale in Montana and to forward the copies to the department of agriculture within 24 hours of the date the bill of lading was obtained.

History: En. Sec. 5, Ch. 171, L. 1931; re-en. Sec. 1751.5, R.C.M. 1935; amd. Sec. 4, Ch. 184, L. 1939; amd. Sec. 4, Ch. 243, L. 1961; amd. Sec. 1, Ch. 321, L. 1971; amd. Sec. 26, Ch. 316, L. 1974; amd. Sec. 3, Ch. 280, L. 1977; R.C.M. 1947, 32-1126(1) thru (4); amd. Sec. 2, Ch. 226, L. 1981; amd. Sec. 3, Ch. 686, L. 1985; amd. Sec. 121, Ch. 370, L. 1987; amd. Sec. 2, Ch. 57, L. 1989; amd. Sec. 1, Ch. 446, L. 1989; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 1, Ch. 70, L. 1993; amd. Sec. 12, Ch. 575, L. 1993; amd. Sec. 10, Ch. 236, L. 1995.

Cross-References

Public scales, Title 7, ch. 21, part 31.

Highway patrol jurisdiction, Title 44, ch. 1, part 10.

Peace officer defined, 45-2-101.

Enforcement by Department of Transportation personnel, Title 61, ch. 12, part 2.

61-10-142. Display of permit. A special permit issued under 61-10-121 shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any peace officer, officer of the highway patrol, or employee of the department of transportation.

History: **En. 32-1127.8 by Sec. 34, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.8; amd. Sec. 122, Ch. 370, L. 1987; amd. Sec. 3, Ch. 512, L. 1991.**

Cross-References

Highway patrol jurisdiction, Title 44, ch. 1, part 10.

Peace officer defined, 45-2-101.

Enforcement by Department of Transportation personnel, Title 61, ch. 12, part 2.

61-10-143. Confiscation — action by commission. A peace officer, officer of the highway patrol, or employee of the department of transportation who finds a person operating a vehicle, combination of vehicles, load, object, or other thing in violation of the conditions of a special permit may confiscate the permit and forward it to the commission. The commission may return it to the permittee or revoke, cancel, or suspend it without refund. The commission shall keep a record of all action taken upon confiscated permits, and if a permit is returned to the permittee, the action taken by the commission shall be endorsed on it. A permittee whose permit is suspended or revoked may, upon request, receive a hearing before the commission or person designated by the commission. The commission, after the hearing, may reinstate the permit or revise its previous action.

History: **En. 32-1127.9 by Sec. 35, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.9; amd. Sec. 123, Ch. 370, L. 1987; amd. Sec. 3, Ch. 512, L. 1991.**

Cross-References

Transportation Commission, 2-15-2502; Title 60, ch. 2, part 1.

Regulation of motor carriers, Title 69, ch. 12.

61-10-144. Violation of standards — tolerance. (1) It is a misdemeanor for a person, firm, or corporation to violate any provision of 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110.

(2) The operator of a vehicle or combination of vehicles may move over the highways to the first open state scale, permanent or portable, without incurring the excess weight penalties set forth in 61-10-145 if the total gross weight of the vehicle or combination of vehicles does not exceed allowable total gross weight limitations by more than 7%, or 10% for garbage trucks, and if the weight carried by any axle or combination of axles does not exceed the allowable axle weight limitations by more than 7%, or 10% for garbage trucks. If the vehicle or combination of vehicles is not in excess of the allowable total gross or axle weight limitations by more than 7%, or 10% for garbage trucks, the department may issue a single trip permit for the fee of $10, allowing the vehicle or combination of vehicles to move over the highways to the first facility where its load can be safely adjusted or to its destination. Violations of total gross or axle weight limitations in excess of 7%, or 10% for garbage trucks, are subject to the fines provided in 61-10-145, and all loads in excess of 7%, or 10% for garbage trucks, of the total gross or axle weight limitations:

(a) may be required to be adjusted or reduced to conform to the size and weight limitations before the vehicle or combination of vehicles is moved from the point of weighing; or

(b) may be issued a permit as authorized by 61-10-141.

(3) Farm vehicles transporting agricultural products from a harvesting combine or other harvesting machinery may move over a highway, except any highway that is part of the federal-aid interstate system, within a 50-mile radius of the harvested field to the point of first unloading without incurring the excess

weight penalties set forth in 61-10-145 if the total gross weight of the farm vehicle or combination of vehicles does not exceed allowable weight limitations by more than 20% for each axle, but the maximum load for each inch of tire width may not exceed 670 pounds. The farm vehicle or combination of vehicles may not exceed 40 miles an hour. A single trip permit, as required in subsection (2), is not applicable to the farm vehicle or combination of vehicles. When a farm vehicle or combination of vehicles violates any of the provisions of this subsection, the fine or penalty imposed applies to that portion of the load above the legal limit.

(4) For the purposes of this section, a garbage truck means only a motor vehicle operated by a Class D motor carrier, as determined and regulated by the public service commission pursuant to 69-12-301(5).

History: En. Sec. 3(a), Ch. 123, L. 1947; amd. Sec. 2, Ch. 243, L. 1961; amd. Sec. 24, Ch. 316, L. 1974; amd. Sec. 1, Ch. 239, L. 1977; R.C.M. 1947, 32-1124; amd. Sec. 2, Ch. 392, L. 1981; amd. Sec. 4, Ch. 487, L. 1983; amd. Sec. 2, Ch. 70, L. 1993; amd. Sec. 1, Ch. 62, L. 1995; amd. Sec. 11, Ch. 236, L. 1995; amd. Sec. 7, Ch. 232, L. 1997; amd. Sec. 1, Ch. 216, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 216 throughout (2) after "7%" inserted "or 10% for garbage trucks"; inserted (4) defining garbage truck; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

61-10-145. Penalties. (1) A person, firm, or corporation convicted of violating 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110 shall be punished by a fine of not less than $30 or more than $100. A person, firm, or corporation convicted of operating a motor vehicle upon the public highways of this state with weight upon a wheel, axle, or group of axles greater than the maximum permitted by 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110 shall be fined, in addition to other penalties provided by law for the offense, the following amounts:

(a) $30 for any excess weight up to and including 2,000 pounds;

(b) $75 for any excess weight more than 2,000 pounds and less than 4,001 pounds;

(c) $125 for any excess weight more than 4,000 pounds and less than 6,001 pounds;

(d) $175 for any excess weight more than 6,000 pounds and less than 8,001 pounds;

(e) $250 for any excess weight more than 8,000 pounds and less than 10,001 pounds;

(f) $275 for any excess weight more than 10,000 pounds and less than 12,001 pounds;

(g) $300 for any excess weight more than 12,000 pounds and less than 14,001 pounds;

(h) $400 for any excess weight more than 14,000 pounds and less than 16,001 pounds;

(i) $500 for any excess weight more than 16,000 pounds and less than 18,001 pounds;

(j) $600 for any excess weight more than 18,000 pounds and less than 20,001 pounds;

(k) $1,000 for any excess weight more than 20,000 pounds and less than 25,001 pounds;

(l) $2,000 for any excess weight more than 25,000 pounds.

(2) If a motor vehicle is equipped with a retractable axle that is not fully extended and carrying its proportionate share of the load while the motor vehicle is operated upon the highways of this state, the weight penalties in subsection (1) apply to all weight over the legal maximum allowed by the fixed axles regardless of whether the axle is extended at the time of weighing. In addition to the penalties in subsection (1), the owner or operator shall be fined $100 for failure to have the retractable axle fully extended while the gross weight of the vehicle exceeds the legal maximum allowed by the fixed axles.

(3) A complaint filed and a summons or notice to appear issued pertaining to a violation of the gross weight regulations in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110 must specify the amount of the excess weight that the defendant is alleged to have had upon the vehicle or combination of vehicles.

(4) It is a misdemeanor, punishable as provided in 46-18-212, for a person, firm, or corporation to violate any of the provisions of 61-10-123, 61-10-141, or 61-10-142.

History: En. Sec. 3(b), Ch. 123, L. 1947; amd. Sec. 3, Ch. 243, L. 1961; amd. Sec. 25, Ch. 316, L. 1974; R.C.M. 1947, 32-1125; amd. Sec. 78, Ch. 421, L. 1979; amd. Sec. 1, Ch. 100, L. 1981; amd. Sec. 1, Ch. 601, L. 1983; amd. Sec. 1, Ch. 380, L. 1985; amd. Sec. 1, Ch. 122, L. 1991; amd. Sec. 3, Ch. 70, L. 1993; amd. Sec. 12, Ch. 236, L. 1995; amd. Sec. 8, Ch. 232, L. 1997.

Cross-References

Duties of County Treasurer, 7-6-2111.

General fiscal duties of State Treasurer, 17-1-111.

Fund structure, 17-2-102.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

61-10-146. Special permits — misrepresentations and violations as misdemeanor. (1) A person who knowingly and willfully misrepresents the size or weight of a vehicle, combination of vehicles, load, object, or other thing in obtaining a special permit or who does not follow the requirements and conditions of the special permit or who operates a vehicle, combination of vehicles, load, object, or other thing the size or weight of which requires a special permit without first obtaining a special permit is guilty of a misdemeanor.

(2) A person, firm, or corporation convicted of:

(a) operating a vehicle or combination of vehicles with weight upon a wheel, axle, or group of axles greater than the maximum authorized by a special permit or of operating without a special permit a vehicle or combination of vehicles the weight of which requires a special permit shall, in addition to the other penalties provided by law for the offense, be punished by a fine in the amount provided in 61-10-145(1); or

(b) violating any provision of 61-10-124(4) or any restriction on the special permits issued by the department under 61-10-124(4) shall be punished by a fine of not less than $500 or more than $1,000, and all special permits issued for the operation of the combination in violation must be confiscated. The combination must be separated into combinations of legal length before the units may proceed.

History: En. 32-1127.7 by Sec. 33, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.7; amd. Sec. 79, Ch. 421, L. 1979; (2) En. Sec. 4, Ch. 474, L. 1987; amd. Sec. 50, Ch. 16, L. 1991; amd. Sec. 2, Ch. 122, L. 1991; amd. Sec. 9, Ch. 232, L. 1997.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

False swearing, 45-7-202.

Unsworn falsification to authorities, 45-7-203.

Misdemeanor — no penalty specified, 46-18-212.

61-10-147. Penalties for using highway when use is restricted. (1) It is a misdemeanor for a person, firm, or corporation to violate any of the provisions of 61-10-128(2).

(2) A person, firm, or corporation first convicted of a misdemeanor for a violation of any of the provisions of 61-10-128(2) shall be punished by a fine of not less than $10 or more than $50 or by imprisonment in the county or municipal jail for not less than 5 days or more than 25 days. For a second conviction within 1 year the person, firm, or corporation shall be punished by a fine of not less than $50 or more than $200 or by imprisonment in the county or municipal jail for not less than 25 days or more than 100 days or by both this fine and imprisonment. Upon a third or subsequent conviction within 1 year after the first conviction the person, firm, or corporation shall be punished by a fine of not less than $200 or more than $500 or by imprisonment in the county or municipal jail for not less than 100 days or more than 6 months or by both this fine and imprisonment.

History: En. Sec. 9, Ch. 171, L. 1931; re-en. Sec. 1751.9, R.C.M. 1935; amd. Sec. 7, Ch. 184, L. 1939; amd. Sec. 38, Ch. 316, L. 1974; R.C.M. 1947, 32-1130.

61-10-148. Disposition of fines and forfeited bonds. (1) Except as provided in 61-12-701 and subsection (2) of this section, one-half of all the money collected as fines and forfeited bonds for violations of Title 61, chapter 10, must be remitted monthly by the county treasurer to the state treasurer for deposit in the state general fund. The remaining half, less the deductions required by law, must be deposited in the county road fund. This subsection does not apply to fines and forfeited bonds paid to justices' courts.

(2) If the apprehension or arrest was for a violation of Title 61, chapter 10, and if the offense occurred on a road or highway not included under the provisions of 60-2-128 and 60-2-203, all money collected as fines and forfeited bonds must be distributed to the county treasurer for deposit in the county road fund.

History: En. Sec. 1, Ch. 10, Ch. 72, L. 1913; re-en. Sec. 1, Ch. 10, Ch. 141, L. 1915; re-en. Sec. 1752, R.C.M. 1921; re-en. Sec. 1752, R.C.M. 1935; amd. Sec. 12, Ch. 226, L. 1965; amd. Sec. 11, Ch. 214, L. 1969; R.C.M. 1947, 32-1131; amd. Sec. 80, Ch. 421, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 601, L. 1983; amd. Sec. 2, Ch. 316, L. 1987; amd. Secs. 39, 66, Ch. 557, L. 1987; amd. Sec. 18, Ch. 87, L. 1993; amd. Sec. 59, Ch. 509, L. 1995; amd. Sec. 23, Ch. 389, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 389 in (1) at end of first sentence substituted "state general fund" for "highway nonrestricted account in the state special revenue fund". Amendment effective July 1, 1999.

Cross-References

Highway revenue nondiversion, Art. VIII, sec. 6, Mont. Const.

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Duties of County Treasurer, 7-6-2111.

General fiscal duties of State Treasurer, 17-1-111.

Fund structure, 17-2-102.

61-10-149 through 61-10-154 reserved.

61-10-155. Rulemaking authority. The department of transportation may adopt and enforce rules to implement this chapter.

History: En. Sec. 1, Ch. 371, L. 1989; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 2

Gross Vehicle Weight Licensing Requirements

Part Cross-References

Criminal jurisdiction of Justices' Courts, 3-10-303.

Interstate cooperative agreements for collection of taxes and fees, 60-2-311.

Gross weight defined, 61-1-502.

61-10-201. Weight fees on motortrucks, truck tractors, and buses. In addition to other fees for the licensing of vehicles and except as provided in 61-10-203, there must be paid and collected annually for each truck, truck tractor, and bus, based upon the manufacturer's rated capacity for trucks with a capacity of 1 ton or less and upon the maximum gross loaded weight and the maximum gross weight of any towed unit of each truck and truck tractor as set by the licensee in the licensee's application, the following fees:

Schedule I

Manufacturer's rated capacity up to 1/2 ton	$ 7.00
Manufacturer's rated capacity of 3/4 ton	12.50
Manufacturer's rated capacity of 1 ton	17.50
Up to 16,000 lbs	21.00
16,001 through 18,000 lbs	28.00
18,001 through 20,000 lbs	37.50
20,001 through 22,000 lbs	47.00
22,001 through 24,000 lbs	70.00
24,001 through 26,000 lbs	90.00
26,001 through 28,000 lbs	110.00
28,001 through 30,000 lbs	130.00
30,001 through 32,000 lbs	150.00
32,001 through 34,000 lbs	170.00
34,001 through 36,000 lbs	190.00
36,001 through 38,000 lbs	215.00
38,001 through 40,000 lbs	235.00
40,001 through 42,000 lbs	255.00
42,001 through 44,000 lbs	275.00
44,001 through 46,000 lbs	300.00
46,001 through 48,000 lbs	320.00
48,001 through 50,000 lbs	340.00
50,001 through 52,000 lbs	360.00
52,001 through 54,000 lbs	380.00
54,001 through 56,000 lbs	400.00

56,001 through 58,000 lbs	420.00
58,001 through 60,000 lbs	440.00
60,001 through 62,000 lbs	460.00
62,001 through 64,000 lbs	482.50
64,001 through 66,000 lbs	502.50
66,001 through 68,000 lbs	522.50
68,001 through 70,000 lbs	545.75
70,001 through 72,000 lbs	566.50
72,001 through 74,000 lbs	607.50
74,001 through 76,000 lbs	655.00
76,001 through 78,000 lbs	695.00
78,001 through 80,000 lbs	750.00
Over 80,000 lbs. and within the weight limits specified in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110	750.00 plus an additional 46.00 for each ton or fraction of a ton in excess of 80,000 lbs. plus an additional $100.00 to exceed the 80,000 lbs. federal gross weight limit.

History: Ap. p. Sec. 6-201, Ch. 197, L. 1965; amd. Sec. 2, Ch. 2, Ex. L. 1967; Sec. 32-3301, R.C.M. 1947; Ap. p. Sec. 6-203, Ch. 197, L. 1965; amd. Sec. 4, Ch. 2, Ex. L. 1967; amd. Sec. 113, Ch. 316, L. 1974; Sec. 32-3303, R.C.M. 1947; R.C.M. 1947, 32-3301, 32-3303; amd. Sec. 81, Ch. 421, L. 1979; amd. Sec. 13, Ch. 575, L. 1993; amd. Sec. 6, Ch. 88, L. 1995; amd. Sec. 13, Ch. 236, L. 1995; amd. Sec. 10, Ch. 232, L. 1997.

Cross-References

Truck defined, 61-1-107.

Truck tractor defined, 61-1-108.

61-10-202. Repealed. Sec. 21, Ch. 575, L. 1993.

History: Ap. p. Sec. 6-202, Ch. 197, L. 1965; amd. Sec. 3, Ch. 2, Ex. L. 1967; Sec. 32-3302, R.C.M. 1947; Ap. p. Sec. 6-203, Ch. 197, L. 1965; amd. Sec. 4, Ch. 2, Ex. L. 1967; amd. Sec. 113, Ch. 316, L. 1974; Sec. 32-3303, R.C.M. 1947; R.C.M. 1947, 32-3302, 32-3303; amd. Sec. 82, Ch. 421, L. 1979.

61-10-203. Alternative gross weight fees on motortrucks and truck tractors with special trailer combinations. (1) In addition to other fees for the licensing of vehicles, there must be paid and collected annually for each motortruck or truck tractor operating under the provisions of 61-10-124(4) and (5), based upon the maximum combined gross loaded weight of a truck tractor or a motortruck and trailers, as set by the licensee in the application, the following fees:

Schedule II

Truck tractor or a motortruck and trailers:

Up to 42,000 lbs	$ 571.00
42,001 to 44,000 lbs	631.00
44,001 to 46,000 lbs	691.00
46,001 to 48,000 lbs	752.00
48,001 to 50,000 lbs	812.00
50,001 to 52,000 lbs	871.00

52,001 to 54,000 lbs.	931.00
54,001 to 56,000 lbs.	992.00
56,001 to 58,000 lbs.	1,052.00
58,001 to 60,000 lbs.	1,112.00
60,001 to 62,000 lbs.	1,172.00
62,001 to 64,000 lbs.	1,233.00
64,001 to 66,000 lbs.	1,293.00
66,001 to 68,000 lbs.	1,352.00
68,001 to 70,000 lbs.	1,412.00
70,001 to 72,000 lbs.	1,473.00
72,001 to 74,000 lbs.	1,533.00
74,001 to 76,000 lbs.	1,593.00
76,001 to 78,000 lbs.	1,653.00
78,001 to 80,000 lbs.	1,718.50
Over 80,000 lbs. and within the weight limits specified in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110	1,718.50 plus an additional $65.50 for each ton or fraction of a ton in excess of 80,000 lbs. plus an additional $100.00 to exceed the 80,000 lbs. federal gross weight limit.

(2) The trailers or semitrailers must be currently registered in another country, state, or county.

History: En. Sec. 7, Ch. 2, Ex. L. 1967; amd. Sec. 1, Ch. 212, L. 1971; amd. Sec. 112, Ch. 316, L. 1974; R.C.M. 1947, 32-3302.1; amd. Sec. 1, Ch. 5, L. 1985; amd. Sec. 1, Ch. 183, L. 1991; amd. Sec. 16, Ch. 575, L. 1993; amd. Sec. 11, Ch. 232, L. 1997.

Cross-References

Truck defined, 61-1-107.
Truck tractor defined, 61-1-108.
Trailer defined, 61-1-111.
Semitrailer defined, 61-1-112.
Registration, Title 61, ch. 3, part 3.
Registration of foreign vehicles, Title 61, ch. 3, part 7.

61-10-204. Repealed. Sec. 21, Ch. 575, L. 1993.

History: En. Sec. 6-204, Ch. 197, L. 1965; amd. Sec. 1, Ch. 187, L. 1969; R.C.M. 1947, 32-3304.

61-10-205. Repealed. Sec. 21, Ch. 575, L. 1993.

History: En. 32-3304.1 by Sec. 2, Ch. 187, L. 1969; amd. Sec. 1, Ch. 102, L. 1971; R.C.M. 1947, 32-3304.1; amd. Sec. 1, Ch. 600, L. 1987.

61-10-206. Special fees — certain farm vehicles. (1) Except for motortrucks owned and operated by cooperative associations or cooperative marketing associations, there must be paid and collected annually a fee equal to 35% of the fees provided in Schedule I and Schedule II on:

(a) motortrucks owned and operated by ranchers or farmers in the transportation of their own ranch, farm, orchard, or dairy products from point of production to market, or of supplies, commodities, or equipment to be used on the ranch, farm, orchard, or dairy, or in the infrequent or seasonal transportation by one farmer for another for any purpose other than commercial hire of products of the farm, orchard, or dairy, or of supplies or commodities to be used on the farm, orchard, or dairy; and

(b) one truck tractor and lowboy trailer used by contractors engaged exclusively in soil conservation work and land leveling activities that result in direct benefit to agriculture.

(2) The minimum fee is $6.

History: En. Sec. 6-206, Ch. 197, L. 1965; amd. Sec. 1, Ch. 143, L. 1967; amd. Sec. 6, Ch. 2, Ex. L. 1967; R.C.M. 1947, 32-3306; amd. Sec. 17, Ch. 575, L. 1993; amd. Sec. 2, Ch. 314, L. 1995.

Cross-References

Cooperative associations, Title 35, ch. 15.
Agricultural associations, Title 35, ch. 16.
Cooperative agricultural marketing, Title 35, ch. 17.
Truck defined, 61-1-107.
Trailer defined, 61-1-111.
Semitrailer defined, 61-1-112.

61-10-207. Repealed. Sec. 21, Ch. 575, L. 1993.

History: En. Sec. 6-207, Ch. 197, L. 1965; R.C.M. 1947, 32-3307.

61-10-208. Repealed. Sec. 21, Ch. 575, L. 1993.

History: En. Sec. 6-205, Ch. 197, L. 1965; amd. Sec. 5, Ch. 2, Ex. L. 1967; R.C.M. 1947, 32-3305.

61-10-209. Monthly payment — quarterly payment — penalty for failure to pay fee. (1) When the gross weight of a vehicle exceeds 24,000 pounds, the gross weight or special fees for trucks, tractors, or buses may be paid for a 1-month period for one-twelfth the regular fee or for a 3-month period for one-fourth the regular fee at the beginning of any quarter of the calendar year. For each fee paid other than at the time of payment of the annual vehicle registration fee, an additional fee of $5 must be charged. The department may adopt rules relative to the issuance and display of certificates or insignia, which must state the months for which the vehicle is licensed.

(2) A vehicle licensed under this section may not be operated over the public highways after the expiration of:

(a) the 1-month period until the owner pays the required fee for a license for an additional 1-month or 3-month period or for the remainder of the year; or

(b) the 3-month period unless the owner or operator of the vehicle, within 10 calendar days or 7 business days as provided by law, whichever is greater, pays the required fee for a license for an additional 1-month or 3-month period or for the remainder of the year.

(3) A person who operates a vehicle upon the public highways in violation of subsection (2) is guilty of a misdemeanor. In addition the person is required to purchase a gross weight license for the vehicle involved at the fee covering an entire year's license for operation of the vehicle less the fees for the period of the year already paid.

(4) If, within 5 days after a requirement under subsection (3) is applicable, a license for a full year has not been purchased as required, the Montana highway patrol, county sheriff, or city police may impound the vehicle in the manner that is directed for these cases by the department until the requirement is met.

History: (1)En. Sec. 6-208, Ch. 197, L. 1965; amd. Sec. 114, Ch. 316, L. 1974; Sec. 32-3308, R.C.M. 1947; (2) thru (4)En. Sec. 6-209, Ch. 197, L. 1965; amd. Sec. 2, Ch. 292, L. 1967; amd. Sec. 115, Ch. 316, L. 1974; Sec. 32-3309, R.C.M. 1947; R.C.M. 1947, 32-3308,

32-3309; amd. Sec. 83, Ch. 421, L. 1979; amd. Sec. 1, Ch. 187, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 18, Ch. 575, L. 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duties of Sheriff, 7-32-2121.

Municipal police force, Title 7, ch. 32, part 41.

Highway patrol jurisdiction, Title 44, ch. 1, part 10.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

Pole trailer defined, 61-1-114.

Gross weight defined, 61-1-502.

61-10-210. Repealed. Sec. 21, Ch. 575, L. 1993.

History: En. Sec. 6-210, Ch. 197, L. 1965; amd. Sec. 116, Ch. 316, L. 1974; R.C.M. 1947, 32-3310.

61-10-211. Fees on motortrucks, truck tractors, trailers, and semitrailers from other states. (1) In lieu of other fees for the licensing of vehicles, there must be collected a fee for each motortruck and truck tractor already licensed for the year in another jurisdiction and operated upon an itinerant basis in this state. The fee provided in subsection (2) must be collected upon each entrance of the vehicle into the state and must be based upon the number of miles to be traveled in the state and the registered gross vehicle weight of the motortruck or truck tractor as shown in the application of the nonresident operator.

(2) The fee for each trip in Montana is:

	0-200 miles	201-400 miles	over 400 miles
Up to 46,000 lbs.	$ 10	$ 15	$ 20
46,001 through 80,000 lbs	20	30	40
Over 80,001 lbs.	50	65	80
Triple combination	60	80	100

(3) The fees do not apply to any trailer the principal use of which is as temporary or permanent living quarters, or to any vehicle of a carnival that is under contract with a state, county, or district fair association.

(4) A fee must be collected for each nonresident, unlicensed or unregistered trailer or semitrailer entering Montana. The fee for each trip in Montana is:

(a) $10 for each trip of 200 miles or less;

(b) $15 for each trip of over 200 miles to 400 miles; and

(c) $20 for each trip of over 400 miles.

History: En. Sec. 6-212, Ch. 197, L. 1965; R.C.M. 1947, 32-3312; amd. Sec. 7, Ch. 40, L. 1981; amd. Sec. 7, Ch. 88, L. 1995; amd. Sec. 12, Ch. 232, L. 1997.

Cross-References

County fairs, Title 7, ch. 21, part 34.

Truck defined, 61-1-107.

Truck tractor defined, 61-1-108.

Trailer defined, 61-1-111.

Semitrailer defined, 61-1-112.

61-10-212. Temporary trip permits showing payment of fees — display. (1) Temporary trip permits showing payment of the fees provided for in 61-10-211 shall be issued under rules prescribed by the department. The permit shall be displayed in the vehicle for which the fee has been paid at all times while the vehicle is being operated on the highways of this state by posting it where it may be read.

(2) The department may limit the operation of the vehicle in this state to a definite period of time.

History: En. Sec. 6-213, Ch. 197, L. 1965; amd. Sec. 117, Ch. 316, L. 1974; R.C.M. 1947, 32-3313.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

61-10-213. Time for payment of fees by nonresidents — disposition. A nonresident owner or operator of a motortruck, truck tractor, trailer, or semitrailer shall, immediately upon arrival in the state, contact the nearest highway patrol office, any department office, the county sheriff, or the county treasurer's office to pay the fee and secure the permit prescribed. All fees collected shall immediately be remitted to the county treasurer.

History: En. Sec. 6-214, Ch. 197, L. 1965; amd. Sec. 118, Ch. 316, L. 1974; R.C.M. 1947, 32-3314.

Cross-References

Residence — rules for determining, 1-1-215.

Duties of County Treasurer, 7-6-2111.

Ports of entry, checking stations, and interstate cooperation, Title 60, ch. 2, part 3.

Truck defined, 61-1-107.

Truck tractor defined, 61-1-108.

Trailer defined, 61-1-111.

Semitrailer defined, 61-1-112.

61-10-214. Exemptions. (1) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from the limits are exempt from this part.

(2) Motor vehicles brought or driven into Montana by a nonresident, migratory, bona fide agricultural worker temporarily employed in agricultural work in this state when those motor vehicles are used exclusively for transportation of agricultural workers are exempt from this part.

(3) Vehicles lawfully displaying a dealer's or wholesaler's plate as provided in 61-4-102 and 61-4-125 are exempt from this part for a period not to exceed 7 days when moving to or from a dealer's or wholesaler's place of business when unloaded or loaded with dealer's or wholesaler's property only or while being demonstrated in the course of the dealer's or wholesaler's business. Vehicles being demonstrated may not be leased, rented, or operated for compensation by the licensed dealer or wholesaler.

(4) Vehicles exempt from property tax under 15-6-201(1)(a), (1)(c) through (1)(e), (1)(g), (1)(o), (1)(q), and (1)(v) are exempt from this part. The department of transportation may require documentation of tax-exempt status from the department of revenue before granting this exemption.

History: En. Sec. 12, Ch. 219, L. 1951; amd. Sec. 1, Ch. 262, L. 1967; amd. Sec. 1, Ch. 46, L. 1973; Sec. 53-626, R.C.M. 1947; amd. and redes. 32-3319 by Sec. 183, Ch. 316, L. 1974; R.C.M. 1947, 32-3319(part); amd. Sec. 84, Ch. 421, L. 1979; amd. Sec. 3, Ch. 39, L. 1981; amd. Sec. 1, Ch. 311, L. 1991; amd. Sec. 12, Ch. 383, L. 1991; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 64, Ch. 18, L. 1995; amd. Sec. 30, Ch. 409, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 409 in first sentence of (3) before "dealer's" deleted "licensed" and substituted "61-4-102 and 61-4-125" for "61-4-103". Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

Cross-References

Residence — rules for determining, 1-1-215.

Municipal bus services, Title 7, ch. 14, part 44.

Foreign vehicles used in gainful occupation to be registered — reciprocity, 61-3-701.

Carriers of passengers, Title 69, ch. 11, part 2.

61-10-215. Additional tax by municipalities prohibited — exceptions. Municipalities shall not levy, assess, collect, or charge any additional tax upon any carrier of persons or property for hire, except as provided by law. However, no carrier shall be exempt hereby from paying a parking, curb, or ad valorem property tax levied by any municipality.

History: En. Sec. 6-106, Ch. 197, L. 1965; R.C.M. 1947, 32-3206.

Cross-References

Municipal taxation, Title 7, ch. 6, part 44.

Licensing and regulating of vehicles engaged in transporting persons and property, 7-21-4205.

61-10-216 through 61-10-220 reserved.

61-10-221. Purpose of fees. The fees provided in this part are in consideration of the right to use the highways of the state of Montana.

History: En. Sec. 13, Ch. 219, L. 1951; Sec. 53-627, R.C.M. 1947; amd. and redes. 32-3320 by Sec. 184, Ch. 316, L. 1974; R.C.M. 1947, 32-3320(part).

Cross-References

Highways — legislative policy and intent, 60-1-102.

Agreements concerning analysis of effects of weight on highways, 60-2-207.

61-10-222. Time for payment of fees. (1) Prior to or at the time of registration of the vehicle as required under chapter 3 or chapter 4 or prior to the operation of the vehicle on the public highways, fees provided in this part must be paid in the full amount unless otherwise provided by law. With respect to vehicles operating on the highways with a current 20-day permit issued under the provisions of 61-4-111 or 61-4-112, the fees provided in this part are due and payable at the time of registration.

(2) A person who applies for a GVW license after July 1 of any year shall pay one-half of the fees provided in this part.

(3) When a person applies for registration required under chapter 3 for a period of time other than the calendar year, the fees provided in this part must be computed for the registration period at one-twelfth of the applicable fee for each month or part of month in the registration period.

History: En. Sec. 6-101, Ch. 197, L. 1965; amd. Sec. 1, Ch. 292, L. 1967; amd. Sec. 1, Ch. 47, L. 1973; amd. Sec. 109, Ch. 316, L. 1974; amd. Sec. 14, Ch. 74, L. 1975; R.C.M. 1947, 32-3201; amd. Sec. 85, Ch. 421, L. 1979; amd. Sec. 4, Ch. 342, L. 1995.

Cross-References

Registration — time for making application, 61-3-311.

Registration fees of vehicles, 61-3-321.

61-10-223. Expiration date. Any GVW license issued shall be valid only for the period for which issued.

History: En. Sec. 6-102, Ch. 197, L. 1965; R.C.M. 1947, 32-3202; amd. Sec. 86, Ch. 421, L. 1979.

61-10-224. GVW license transferable. The GVW license issued hereunder is transferable by the licensee of a truck, truck tractor, trailer, semitrailer, lowboy trailer, pole trailer, housetrailer, or passenger car to a replacement vehicle of the same type. This gross vehicle weight license transfer may take place without the licensee transferring ownership of the first vehicle. If the transfer is to a smaller vehicle, there shall be no refund.

History: En. Sec. 6-103, Ch. 197, L. 1965; amd. Sec. 4, Ch. 127, L. 1969; R.C.M. 1947, 32-3203; amd. Sec. 2, Ch. 415, L. 1979; amd. Sec. 87, Ch. 421, L. 1979.

Cross-References

Truck defined, 61-1-107.

Truck tractor defined, 61-1-108.

Trailer defined, 61-1-111.

Semitrailer defined, 61-1-112.

Pole trailer defined, 61-1-114.

Housetrailer defined, 61-1-501.

Withdrawal of fleet vehicles — procedure, credits, and accounting, 61-3-725.

61-10-225. Disposition of fees collected by county treasurer. At the time of collecting the fees provided for in 61-10-222, each county treasurer shall retain 5% of the fees for the cost of administration and for deposit in the general fund of the county. The remaining 95% must be remitted monthly to the state treasurer for deposit to the credit of the department of transportation in the highway revenue account. The remittance must be made on forms furnished to the county treasurer by the department.

History: En. Sec. 6-104, Ch. 197, L. 1965; amd. Sec. 1, Ch. 293, L. 1967; amd. Sec. 110, Ch. 316, L. 1974; R.C.M. 1947, 32-3204; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 60, Ch. 509, L. 1995.

Cross-References

Highway revenue nondiversion, Art. VIII, sec. 6, Mont. Const.

Duties of County Treasurer, 7-6-2111.

General fiscal duties of State Treasurer, 17-1-111.

Fund structure, 17-2-102.

61-10-226. Deposit of state highway money. (1) Money received for the use of the department from the receipt or transfer of GVW license fees, as provided by law, or from other state sources must be deposited in the highway revenue account in the state special revenue fund to the credit of the department.

(2) Money received from the federal government or other agencies must be deposited in a federal or state special revenue fund to the credit of the department.

(3) Money collected for the department as authorized by law must be credited to the appropriate fund by the state treasurer.

(4) Money received from the counties must be deposited in the appropriate account in the state special revenue fund to the credit of the department.

History: En. Sec. 6-105, Ch. 197, L. 1965; amd. Sec. 111, Ch. 316, L. 1974; R.C.M. 1947, 32-3205; amd. Sec. 88, Ch. 421, L. 1979; amd. Sec. 1, Ch. 48, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 6, Ch. 700, L. 1989; amd. Sec. 61, Ch. 509, L. 1995.

Cross-References

Highway revenue nondiversion, Art. VIII, sec. 6, Mont. Const.

General fiscal duties of State Treasurer, 17-1-111.

Fund structure, 17-2-102.

Distribution and apportionment of highway funds, Title 60, ch. 3.

61-10-227. Blank forms furnished county treasurers. The department shall furnish all county treasurers with the following:

(1) blank application forms and affidavit forms outlining and providing for the information needed in each classification of license required;

(2) GVW licenses in a form determined most suitable by the department;

(3) the other forms, stickers, certificates, or blanks the department considers necessary to carry out this part.

History: En. Sec. 6, Ch. 219, L. 1951; Sec. 53-620, R.C.M. 1947; amd. and redes. 32-3205.1 by Sec. 181, Ch. 316, L. 1974; R.C.M. 1947, 32-3205.1; amd. Sec. 89, Ch. 421, L. 1979.

Cross-References

Duties of County Treasurer, 7-6-2111.

61-10-228 through 61-10-230 reserved.

61-10-231. Enforcement. The highway patrol and any designated employee of the department of transportation shall enforce this part and 61-3-502(1), and those persons shall examine and inspect the motor vehicles operating upon the highways in this state and regulated by this part and 61-3-502(1) to ascertain whether or not those laws are being complied with.

History: En. Sec. 10, Ch. 219, L. 1951; amd. Sec. 1, Ch. 156, L. 1955; Sec. 53-624, R.C.M. 1947; amd. and redes. 32-3318 by Sec. 182, Ch. 316, L. 1974; R.C.M. 1947, 32-3318; amd. Sec. 4, Ch. 39, L. 1981; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Highway patrol jurisdiction, Title 44, ch. 1, part 10.

Enforcement by Department of Transportation personnel, Title 61, ch. 12, part 2.

61-10-232. Violation — penalty. Any owner or operator of a motortruck, truck tractor, trailer, semitrailer, bus, or automobile who violates any provision of this part is guilty of a misdemeanor and shall be punished by a fine of not more than $300 or by a sentence of not more than 60 days in the county jail or both.

History: En. Sec. 6-216, Ch. 197, L. 1965; R.C.M. 1947, 32-3316.

Cross-References

Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.
Truck defined, 61-1-107.
Truck tractor defined, 61-1-108.
Trailer defined, 61-1-111.
Semitrailer defined, 61-1-112.
Bus defined, 61-1-115.

61-10-233. Excess weight — penalties. (1) The operator is subject to the penalties stated in 61-10-232 whenever the gross loaded weight of any trucks, truck tractor, trailer, or semitrailer operated upon any highway in this state exceeds the gross vehicle weight shown on:

(a) the owner's certificate of registration and payment receipt issued under 61-3-322; or

(b) the gross vehicle weight receipt issued under 61-10-227.

(2) In addition, the operator shall immediately pay to the nearest county treasurer or to the department the difference between the fee already paid and that applicable to the gross weight of his vehicle before unloading the excess, provided that it does not exceed the legal axle weight.

History: En. Sec. 6-217, Ch. 197, L. 1965; amd. Sec. 1, Ch. 37, L. 1971; amd. Sec. 120, Ch. 316, L. 1974; R.C.M. 1947, 32-3317; amd. Sec. 90, Ch. 421, L. 1979; amd. Sec. 37, Ch. 614, L. 1981.

Cross-References

Duties of County Treasurer, 7-6-2111.
Truck defined, 61-1-107.
Truck tractor defined, 61-1-108.
Trailer defined, 61-1-111.
Semitrailer defined, 61-1-112.
Axle defined, 61-1-128.
Gross weight defined, 61-1-502.

61-10-234 through 61-10-240 reserved.

61-10-241. Terminated. Sec. 39(5), Ch. 15, Sp. L. July 1992.

History: **En. Sec. 34, Ch. 15, Sp. L. July 1992.**

Parts 3 through 10 reserved

Part 11

Multistate Highway Transportation Agreement

Part Cross-References

Interstate cooperative agreements for collection of taxes and fees, 60-2-311.

61-10-1101. Multistate Highway Transportation Agreement — enactment and text. The Multistate Highway Transportation Agreement is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT

Pursuant to and in conformity with the laws of their respective jurisdictions, the participating jurisdictions, acting by and through their officials lawfully authorized to execute this agreement, do mutually agree as follows:

Article I. Findings and Purposes

Section 1. Findings. The participating jurisdictions find that:

(a) the expanding regional economy depends on expanding transportation capacity;

(b) highway transportation is the major mode for movement of people and goods in the western states;

(c) uniform application in the West of more adequate vehicle size and weight standards will result in a reduction of pollution, congestion, fuel consumption, and related transportation costs, which are necessary to permit increased productivity;

(d) a number of western states, already having adopted substantially the 1964 bureau of public roads recommended vehicle size and weight standards, still find current federal limits more restrictive;

(e) the 1974 revision of federal law (23 U.S.C. 127) did not contain any substantial improvements for vehicle size and weight standards in the western states and deprives states of interstate matching money if vehicle weights and widths are increased, even though the interstate system is nearly 92% complete; and

(f) the participating jurisdictions are most capable of developing vehicle size and weight standards most appropriate for the regional economy and transportation requirements, consistent with and in recognition of principles of highway safety.

Section 2. Purposes. The purposes of this agreement are to:

(a) adhere to the principle that each participating jurisdiction should have the freedom to develop vehicle size and weight standards that it determines to be most appropriate to its economy and highway system;

(b) establish a system authorizing the operation of vehicles traveling between two or more participating jurisdictions at more adequate size and weight standards;

(c) promote uniformity among participating jurisdictions in vehicle size and weight standards on the basis of the objectives set forth in this agreement;

(d) secure uniformity, insofar as possible, of administrative procedures in the enforcement of recommended vehicle size and weight standards;

(e) provide means for the encouragement and utilization of research that will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in section 1 of this article.

Article II. Definitions

Section 1. As used in this agreement:

(a) "designated representative" means a legislator or other person authorized to represent the jurisdiction;

(b) "jurisdiction" means a state of the United States or the District of Columbia;

(c) "vehicle" means any vehicle as defined by statute to be subject to size and weight standards that operates in two or more participating jurisdictions.

Article III. General Provisions

Section 1. Qualifications for membership. Participation in this agreement is open to jurisdictions that subscribe to the findings, purposes, and objectives of this agreement and will seek legislation necessary to accomplish these objectives.

Section 2. Cooperation. The participating jurisdictions, working through their designated representatives, shall cooperate and assist each other in achieving the desired goals of this agreement pursuant to appropriate statutory authority.

Section 3. Effect of headings. Article and section headings contained herein may not be considered to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any article or section hereof.

Section 4. Vehicle laws and regulations. This agreement does not authorize the operation of a vehicle in any participating jurisdiction contrary to the laws or regulations thereof.

Section 5. Interpretation. The final decision regarding interpretation of questions at issue relating to this agreement shall be reached by unanimous joint action of the participating jurisdictions, acting through the designated representatives. Results of all such actions shall be placed in writing.

Section 6. Amendment. This agreement may be amended by unanimous joint action of the participating jurisdictions, acting through the officials thereof authorized to enter into this agreement, subject to the requirements of section 4, Article III. Any amendment shall be placed in writing and become a part hereof.

Section 7. Restrictions, conditions, or limitations. Any jurisdiction entering this agreement shall provide each other participating jurisdiction with a list of any restriction, condition, or limitation on the general terms of this agreement, if any.

Section 8. Additional jurisdictions. Additional jurisdictions may become members of this agreement by signing and accepting the terms of the agreement.

Article IV. Cooperating Committee

Section 1. Pursuant to section 2, Article III, the designated representatives of the participating jurisdictions shall constitute a committee that shall have the power to:

(a) collect, correlate, analyze, and evaluate information resulting or derivable from research and testing activities in relation to vehicle size and weight related matters;

(b) recommend and encourage the undertaking of research and testing in any aspect of vehicle size and weight or related matter when, in their collective judgment, appropriate or sufficient research or testing has not been undertaken;

(c) recommend changes in law or policy with emphasis on compatibility of laws and uniformity of administrative rules that would promote effective governmental action or coordination in the field of vehicle size and weight related matters.

Section 2. Each participating jurisdiction shall be entitled to one vote only. No action of the committee shall be binding unless a majority of the total number of votes cast by participating jurisdictions are in favor thereof.

Section 3. The committee shall meet at least once annually and shall elect, from among its members, a chairman, a vice-chairman, and a secretary.

Section 4. The committee shall submit annually to the legislature of each participating jurisdiction, no later than November 1, a report setting forth the work of the committee during the preceding year and including recommendations developed by the committee. The committee may submit such additional reports as it considers appropriate or desirable. Copies of all such reports shall be made available to the transportation committee of the western conference, council of state governments, and to the western association of state highway and transportation officials.

Article V. Objectives of the Participating Jurisdictions

Section 1. Objectives. The participating jurisdictions hereby declare that:

(a) it is the objective of the participating jurisdictions to obtain more efficient and more economical transportation by motor vehicles between and among the participating jurisdictions by encouraging the adoption of standards that will, as minimums, allow the operation on all state highways, except those determined through engineering evaluation to be inadequate, with a single-axle weight not in excess of 20,000 pounds, a tandem-axle weight not in excess of 34,000 pounds, and a gross vehicle or combination weight not in excess of that resulting from application of the formula:

$$W = 500((LN/(N - 1)) + 12N + 36)$$

where

W = maximum weight in pounds carried on any group of two or computed to nearest 500 pounds;

L = distance in feet between the extremes of any group of two or more consecutive axles;

N = number of axles in group under consideration;

(b) it is the further objective of the participating jurisdictions that in the event the operation of a vehicle or combination of vehicles according to the provisions of subsection (a) of this section would result in withholding or forfeiture of federal-aid funds pursuant to section 127, Title 23, U.S. Code, the operation of such vehicle or combination of vehicles at axle and gross weights within the limits set forth in subsection (a) of this section will be authorized under special permit authority by each participating jurisdiction that could legally issue such permits prior to July 1, 1956, provided all regulations and procedures related to such issuance in effect as of July 1, 1956, are adhered to;

(c) the objectives of subsections (a) and (b) of this section relate to vehicles or combinations of vehicles in regular operation, and the authority of any participating jurisdiction to issue special permits for the movement of any vehicle or combinations of vehicles having dimensions and/or weights in excess of the maximum statutory limits in each participating jurisdiction will not be affected;

(d) it is the further objective of the participating jurisdictions to facilitate and expedite the operation of any vehicle or combination of vehicles between and among the participating jurisdictions under the provisions of subsection (a) or (b) of this section, and to that end the participating jurisdictions hereby agree, through their designated representatives, to meet and cooperate in the consideration of vehicle size and weight related matters including but not limited to the development of uniform enforcement procedures; additional vehicle size and weight standards; operational standards; agreements or compacts to facilitate regional application and administration of vehicle size and weight standards; uniform permit procedures; uniform application forms; rules for the operation of vehicles, including equipment requirements, driver qualifications, and operating practices; and such other matters as may be pertinent;

(e) in recognition of the limited prospects of federal revision of section 127, Title 23, U.S. Code, and in order to protect participating jurisdictions against any possibility of withholding or forfeiture of federal-aid highway funds, it is the further objective of the participating jurisdictions to secure congressional approval of this agreement and specifically of the vehicle size and weight standards set forth in subsection (a) of this section;

(f) in recognition of desire for a degree of national uniformity of size and weight regulations, it is the further objective to encourage development of broad, uniform size and weight standards on a national basis and further that procedures adopted under this agreement be compatible with national standards.

Article VI. Entry Into Force and Withdrawal

Section 1. This agreement shall enter into force when enacted into law by any two or more jurisdictions. Thereafter, this agreement shall become effective as to any other jurisdiction upon its enactment thereof, except as otherwise provided in section 8, Article III.

Section 2. Any participating jurisdiction may withdraw from this agreement by canceling the same but no such withdrawal shall take effect until 30 days after the designated representative of the withdrawing jurisdiction has given notice in writing of the withdrawal to all other participating jurisdictions.

Article VII. Construction and Severability

Section 1. This agreement shall be liberally construed so as to effectuate the purposes thereof.

Section 2. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any participating jurisdiction or the applicability thereto to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement shall not be affected thereby. If this agreement shall be held contrary to the constitution of any jurisdiction participating herein, the agreement shall remain in full force and effect as to the jurisdictions affected as to all severable matters.

Article VIII. Filing of Documents

Section 1. A copy of this agreement, its amendments, and rules promulgated thereunder and interpretations thereof shall be filed in the highway department in each participating jurisdiction and shall be made available for review by interested parties.

Article IX. Existing Statutes Not Repealed

Section 1. All existing statutes prescribing weight and size standards and all existing statutes relating to special permits shall continue to be of force and effect until amended or repealed by law.

Article X. State Government Departments Authorized to Cooperate With Cooperating Committee

Section 1. Within appropriations available therefor, the departments, agencies, and officers of the government of this state shall cooperate with and assist the cooperating committee within the scope contemplated by Article IV, subsections 1(a) and 1(b) of the agreement. The departments, agencies, and officers of the government of this state are authorized generally to cooperate with said cooperating committee.

History: En. Sec. 1, Ch. 224, L. 1981; amd. Sec. 2, Ch. 235, L. 1989.

Cross-References

Highway code, Title 60, ch. 1.

Department of Transportation — general powers and duties, Title 60, ch. 2, part 2.

Assent to federal law, 60-3-101.

CHAPTER 11

RECORDS AND REPORTS OF CONVICTIONS

Part 1 — General Provisions

61-11-101. Report of convictions and suspension or revocation of driver's licenses — surrender of licenses.
61-11-102. Records to be kept by the department.
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61-11-104. Justices of the peace — availability of records.
61-11-105. Release of information — fees.

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61-11-201. Purpose.
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61-11-206. Repealed.
61-11-207. Abstracts admissible as evidence.
61-11-208. Repealed.
61-11-209. Repealed.
61-11-210. Appeals.
61-11-211. Department to revoke license of habitual offender — removal of points upon revocation.
61-11-212. Penalties.
61-11-213. Habitual traffic offender operating motor vehicle guilty of misdemeanor.
61-11-214. Repealed.
61-11-215. Construction.

Chapter Cross-References

Traffic regulation — enforcement — penalties, Title 61, ch. 8, part 7.

Part 1

General Provisions

61-11-101. Report of convictions and suspension or revocation of driver's licenses — surrender of licenses. (1) If a person is convicted of an offense for which chapter 5 makes mandatory the suspension or revocation of the driver's license of the person by the department, the court in which the conviction occurs shall require the surrender to it of all driver's licenses then held by the convicted person. The court shall, within 5 days, forward the license and a record of the conviction to the department. If the person does not possess a driver's license, the court shall indicate that fact in its report to the department.

(2) A court having jurisdiction over offenses committed under a statute of this state or a municipal ordinance regulating the operation of motor vehicles on highways shall forward a record of the conviction or forfeiture to the department within 5 days after a conviction or a forfeiture of bail that is not vacated, except for a conviction or a forfeiture of bail for a standing or parking statute or ordinance, and may recommend the suspension of the driver's license of the convicted person. The court may also recommend that the department issue a restricted probationary license on the condition that the individual comply with the requirement that the person attend and complete a chemical dependency education course, treatment, or both, as ordered by the court under 61-8-732. The department shall issue a restricted probationary license unless the person is not entitled to a Montana driver's license. Upon issuance of a probationary license, the licensee is subject to the restrictions and may not operate a vehicle in violation of the restrictions.

(3) A court or other agency of this state or of a subdivision of the state that has jurisdiction to take any action suspending, revoking, or otherwise limiting

a license to drive shall report an action and the adjudication upon which it is based to the department within 5 days on forms furnished by the department.

History: (1), (2)En. Sec. 29, Ch. 267, L. 1947; amd. Sec. 1, Ch. 165, L. 1957; amd. Sec. 1, Ch. 27, L. 1961; amd. Sec. 1, Ch. 386, L. 1973; amd. Sec. 3, Ch. 430, L. 1977; Sec. 31-145, R.C.M. 1947; (3)En. Sec. 5, Ch. 154, L. 1963; Sec. 31-167, R.C.M. 1947; R.C.M. 1947, 31-145(a), (b), 31-167; amd. Sec. 1, Ch. 74, L. 1985; amd. Sec. 2, Ch. 444, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 36, Ch. 443, L. 1987; amd. Sec. 11, Ch. 789, L. 1991; amd. Sec. 8, Ch. 525, L. 1997; amd. Sec. 6, Ch. 455, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 455 in (2) in first sentence near middle after "vacated" substituted "except for a conviction or a forfeiture of bail for a" for "of any person in the court for a violation of any motor vehicle laws, other than regulations governing" and after "parking" inserted "statute or ordinance" and in second sentence after "complete" substituted "a chemical dependency education course, treatment, or both, as ordered by the court under" for "an alcohol information course as provided in"; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Effect of conviction — civil disabilities, 46-18-801.

Treatment of alcoholics and intoxicated persons, Title 53, ch. 24, part 3.

Standing and parking defined, 61-1-407.

Suspension defined, 61-1-503.

Revocation defined, 61-1-504.

Driver improvement program, Title 61, ch. 2, part 3.

Restricted licenses, 61-5-113.

Surrender and return of license, 61-5-209.

Conviction defined, 61-5-213.

Penalty for misdemeanor, 61-5-307.

Uniformity of interpretation, 61-5-308.

61-11-102. Records to be kept by the department. (1) The department shall file every application for a driver's license received by it and shall maintain suitable indexes containing, in alphabetical order:

(a) all applications denied and on each thereof note the reasons for such denial;

(b) all applications granted; and

(c) the name of every licensee whose license has been suspended or revoked by the department and after each such name note the reasons for such action.

(2) The department shall also file all accident reports and abstracts of court records of convictions received by it under the laws of this state and in connection therewith maintain convenient records or make suitable notations in order that an individual record of each licensee showing the convictions of such licensee and certain traffic accidents in which he has been involved shall be readily ascertainable and available for the consideration of the department upon any application for renewal of license and at other suitable times. No record of involvement in a traffic accident may be entered on a licensee's record unless he was convicted, as defined in 61-11-203, for an act causally related to the accident.

(3) The department is further authorized, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, to forward a certified copy of such record to the motor vehicle administrator in the state wherein the person so convicted is a resident.

(4) The department may photograph, microphotograph, photostat, or reproduce on film any of its records. The film or reproducing material must be durable, and the device used to reproduce the records on the film or material must accurately reproduce and perpetuate the original records. Such a photograph, microphotograph, photostatic copy, or photographic film of the

original record is an original record for all purposes and is admissible in evidence in all courts or administrative agencies. A facsimile, exemplification, or certified copy of the original record is a transcript of the original for purposes stated in this section.

(5) The department may place on a computer storage device the information contained on original records or reproductions of original records made pursuant to this section. Signatures on records need not be placed on a computer storage device.

(6) A reproduction of the information placed on a computer storage device is an original of the record for all purposes and is admissible in evidence without further foundation in all courts or administrative agencies when the following certification by a custodian of the record appears on each page:

The individual named below, being a duly designated custodian of the driver records of the department of justice, motor vehicle division, certifies this document as a true reproduction, in accordance with 61-11-102(6), of the information contained in a computer storage device of the department of justice, motor vehicle division.

Signed: ....

(Print Full Name)

History: En. Secs. 25, 27, Ch. 267, L. 1947; R.C.M. 1947, 31-141, 31-143(b); amd. Sec. 1, Ch. 503, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 76, L. 1987.

Cross-References

Admissibility of duplicates — copies of certain entries, Rule 1003, M.R.Ev. (see Title 26, ch. 10).

Public records, Rule 1005, M.R.Ev. (see Title 26, ch. 10).

Duties of Department of Justice — records, 61-3-101.

Application for driver's license, 61-5-107.

Revocation, suspension, or cancellation of licenses, Title 61, ch. 5, part 2.

Uniformity of interpretation, 61-5-308.

Driver License Compact, Title 61, ch. 5, part 4.

Uniform Accident Reporting Act, Title 61, ch. 7, part 1.

61-11-103. Repealed. Sec. 10, Ch. 43, L. 1999.

History: En. 32-2144.6 by Sec. 6, Ch. 60, L. 1974; amd. Sec. 1, Ch. 248, L. 1974; amd. Sec. 1, Ch. 6, L. 1975; R.C.M. 1947, 32-2144.6(2).

61-11-104. Justices of the peace — availability of records. Justices of the peace shall make available to the department records of cases which involve the state highway patrol as the department may request.

History: En. Sec. 16, Ch. 199, L. 1943; R.C.M. 1947, 31-116; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 40, Ch. 557, L. 1987.

Cross-References

Records in Justices' Courts, Title 3, ch. 10, part 5.

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Duties of County Treasurer, 7-6-2111.

Highway patrol jurisdiction, Title 44, ch. 1, part 10.

61-11-105. Release of information — fees. (1) Except as provided in subsection (2), the department shall, upon request, furnish a person the individual Montana driving record of a licensee, showing the following:

(a) driver's license status and expiration date;

(b) convictions of the licensee; and

(c) traffic accidents in which the licensee was involved.

(2) Unless the merits of public disclosure exceed the demands of individual privacy, a driving record of a licensee released under subsection (1) may not disclose an individual's address, social security number, photograph, medical or disability information, or information provided through means of a tracking device.

(3) Information relating to a traffic accident that did not involve a conviction, as defined in 61-11-203, may not be released by the department unless the release is requested or approved by a party involved in the accident or is required by court order or a duly executed subpoena.

(4) A fee of $4 must be paid for each individual Montana driving record requested. A fee of $10 must be paid if a certified Montana record, as provided in 61-11-102(6), is requested. All driving records must be provided without charge to any criminal justice agency, as defined in 44-5-103, or other state or federal agency.

History: En. Sec. 2, Ch. 503, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 467, L. 1989; amd. Sec. 1, Ch. 525, L. 1991; amd. Sec. 1, Ch. 346, L. 1993; amd. Sec. 16, Ch. 416, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 416 in (1) after "request" deleted "and with the licensee's approval"; deleted former (1)(a) that read: "(a) licensee identification data, which may not include the individual's residence address, or information provided through means of an electronic tracking device"; inserted (2) prohibiting disclosure of individual's address, social security number, photograph, medical or disability information, or information provided by tracking device when driving record released unless public disclosure exceeds individual privacy demands; deleted second sentence in (3) that read: "The department shall, upon request, furnish a criminal justice agency or any person or firm having a legitimate purpose as determined by the department with the individual Montana driving record of a licensee showing the items listed in subsections (1)(a) through (1)(d)"; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Powers of judges at chambers, 3-5-311.

Subpoena, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

Part 2

Habitual Traffic Offenders

61-11-201. Purpose. This part is predicated upon the belief and philosophy that innocent drivers and other innocent passengers and pedestrians have a constitutional right to live, free from fear of death or injury from habitual traffic offenders. Further, it is the purpose of this part to reduce the number of motor vehicle accidents in this state and to provide greater safety to the motoring public and others by denying to the habitual traffic offenders the privilege of operating a motor vehicle upon the public streets and highways of this state.

History: En. 31-175 by Sec 1, Ch. 362, L. 1974; R.C.M. 1947, 31-175.

Cross-References

Inalienable rights, Art. II, sec. 3, Mont. Const.

Traffic safety program, Title 61, ch. 2, part 1.

61-11-202. Legislative intent. It is the legislative intent of this part to:

(1) establish criteria and procedures by which persons who have demonstrated their apparent indifference for the safety and welfare of others and their disrespect for the laws of this state and its political subdivisions and

their disregard for the orders of its courts and administrative agencies may be adjudged habitual traffic offenders; and

(2) impose increased deprivation of the privilege to operate a motor vehicle upon these persons.

History: **En. 31-176 by Sec. 2, Ch. 362, L. 1974; R.C.M. 1947, 31-176.**

Cross-References

Revocation, suspension, or cancellation of licenses, Title 61, ch. 5, part 2.

61-11-203. Definitions. As used in this part, the following definitions apply:

(1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty or nolo contendere, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle that is prohibited by law, ordinance, or administrative order.

(2) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in this subsection:

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or negligent vehicular assault, 12 points;

(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, 10 points;

(e) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as defined in 61-7-105, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of $250 to stop at the scene of the accident and give the required information or failure to otherwise report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

(j) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and 61-6-302, 5 points;

(k) operating a motor vehicle without a license to do so, 2 points (this subsection (k) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired);

(l) speeding, except as provided in 61-8-725(2), 3 points;

(m) all other moving violations, 2 points.

(3) There may not be multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more

convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points is chargeable against that defendant.

(4) "License" means any type of license or permit to operate a motor vehicle.

(5) "Moving violation" means a violation of a traffic regulation of this state or another jurisdiction by a person while operating a motor vehicle or in actual physical control of a motor vehicle upon a highway, as the term is defined in 61-1-201.

(6) A traffic regulation includes any provision governing motor vehicle operation, equipment, safety, size, weight, and load restrictions or driver licensing. A traffic regulation does not include provisions governing vehicle registration or local parking.

History: En. 31-177 by Sec. 3, Ch. 362, L. 1974; amd. Sec. 48, Ch. 359, L. 1977; R.C.M. 1947, 31-177(1), (2), (5); amd. Sec. 1, Ch. 519, L. 1979; amd. Sec. 12, Ch. 698, L. 1983; amd. Sec. 124, Ch. 370, L. 1987; amd. Sec. 2, Ch. 335, L. 1989; amd. Sec. 6, Ch. 365, L. 1993; amd. Sec. 4, Ch. 393, L. 1995; amd. Sec. 7, Ch. 43, L. 1999; amd. Sec. 20, Ch. 309, L. 1999; amd. Sec. 24, Ch. 395, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 43 in (2)(l) after "speeding" inserted "except as provided in 61-8-725(2)". Amendment effective May 28, 1999.

Chapter 309 inserted definition of moving violation; and inserted (6) regarding what constitutes traffic regulation. Amendment effective October 1, 1999.

Chapter 395 in definition of conviction inserted "or nolo contendere"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

Cross-References

Felony defined, 45-2-101.

Homicide, Title 45, ch. 5, part 1.

Conditions of bail — violation of conditions, Title 46, ch. 9, part 5.

Effect of conviction — civil disabilities, 46-18-801.

Driver licensing provisions, Title 61, ch. 5, part 1.

Revocation, suspension, or cancellation of licenses, Title 61, ch. 5, part 2.

Accident reporting — penalty for violation, 61-7-118.

Reckless driving, 61-8-301.

Speed restrictions — basic rule, 61-8-303.

Permission of authorities to hold speed contest, 61-8-308.

Operation of vehicle by person with alcohol concentration of 0.10 or more, 61-8-406.

Multiple convictions prohibited, 61-8-408.

Penalty for driving with excessive blood alcohol concentration, 61-8-722.

61-11-204. Department's duties. (1) If the records maintained by the department show that a person's driving record brings the person within the definition of a habitual traffic offender, the department shall:

(a) declare the person a habitual traffic offender;

(b) revoke the person's driver's license or driving privileges as provided in 61-11-211; and

(c) notify the person in writing of the declaration and revocation.

(2) The notice must be sent by first-class mail to the most current address on record with the department. The notice must include a certified reproduction of the person's driving record as contained in the computer storage device used by the department for recordkeeping. The notice must inform the person of the right under 61-11-210 to appeal the declaration and revocation. Service of the notice is complete upon mailing.

History: En. 31-178 by Sec. 4, Ch. 362, L. 1974; R.C.M. 1947, 31-178; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 338, L. 1995; amd. Sec. 21, Ch. 309, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 309 in second sentence in (2) substituted "certified reproduction" for "certified copy" and after "record" substituted "as contained in the computer storage device used by the department for recordkeeping" for "and copies of all relevant abstracts of convictions and bond forfeitures". Amendment effective October 1, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

Cross-References

General duties of Attorney General, 2-15-501.

County Attorney — records and reports, 7-4-2715.

Driver License Compact, Title 61, ch. 5, part 4.

61-11-205. Repealed. Sec. 7, Ch. 338, L. 1995.

History: En. 31-179 by Sec. 5, Ch. 362, L. 1974; R.C.M. 1947, 31-179; amd. Sec. 1, Ch. 503, L. 1985.

61-11-206. Repealed. Sec. 7, Ch. 338, L. 1995.

History: En. 31-180 by Sec. 6, Ch. 362, L. 1974; R.C.M. 1947, 31-180.

61-11-207. Abstracts admissible as evidence. A copy of a driving record maintained by the department, including abstracts of the records of convictions and bond forfeitures in the custody of the department, certified in writing by the department to be a correct account of its records, may be admitted in evidence in a judicial proceeding under this part. A certified driving record is evidence that the person was convicted of each offense shown in the record. A copy of a driving record may be a copy of an original paper record, a digital image of a paper record, or an electronically transmitted copy of a record.

History: En. 31-181 by Sec. 7, Ch. 362, L. 1974; R.C.M. 1947, 31-181; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 2, Ch. 338, L. 1995.

Cross-References

Admissibility of evidence, Rules 104 and 105, M.R.Ev. (see Title 26, ch. 10).

Requirement of authentication or identification, Rule 901, M.R.Ev. (see Title 26, ch. 10).

61-11-208. Repealed. Sec. 7, Ch. 338, L. 1995.

History: En. 31-182 by Sec. 8, Ch. 362, L. 1974; R.C.M. 1947, 31-182.

61-11-209. Repealed. Sec. 7, Ch. 338, L. 1995.

History: En. 31-183 by Sec. 9, Ch. 362, L. 1974; R.C.M. 1947, 31-183.

61-11-210. Appeals. (1) A person declared to be a habitual traffic offender may file a petition in the district court in the county in which the person resides, or in Lewis and Clark County if the person is not a resident of the state, challenging the declaration and revocation. The petition must be filed within 30 days after the person received notice under 61-11-204. Receipt under 61-11-204 is presumed to be on the third day after the date of mailing. After the petition is filed, a copy must be promptly served on the county attorney of the county in which the petition was filed. The county attorney shall represent the department in the proceeding. Proof of service must be filed with the clerk of the court prior to a hearing or grant of relief. Untimely service or lack of service upon the county attorney waives the right to a hearing. The filing of the petition does not stay enforcement of the revocation.

(2) Upon receipt from the county attorney of notice of the petition, the department shall give the county attorney a certified copy of the abstracts of the records of convictions and bond forfeitures upon which the habitual traffic offender declaration was based.

(3) A hearing date must be set and at least 10 days' notice of the date must be given to the parties. The scope of the hearing is limited to whether the petitioner is the person named in the certified abstracts of convictions and bond forfeitures upon which the habitual traffic offender declaration was based and whether the petitioner is a habitual traffic offender. The petitioner has the burden of proving that the department's actions are invalid or that its records are erroneous.

(4) If the court finds that the petitioner is the person declared by the department to be a habitual traffic offender and that the petitioner is a habitual traffic offender, the court shall dismiss the petition. If the court finds that the petitioner is not the person declared by the department to be a habitual traffic offender or that the petitioner is not a habitual traffic offender, the court shall grant the petition and provide the petitioner with appropriate relief, which must include an order that the department reimburse the petitioner for court fees paid by the petitioner.

(5) Upon a finding adverse to the petitioner, the clerk of the court shall file with the department a copy of the court's order, together with the petitioner's driver's license if the license has not been previously surrendered. If the petition is granted, the clerk of the court shall file with the department a copy of the court's order granting the petition. The order must state the grounds upon which the relief was granted and must specify the court findings on the conviction points, if any, that have been accrued by the petitioner. The department shall then correct the petitioner's driving record to comport with the court's specific findings.

History: En. 31-184 by Sec. 10, Ch. 362, L. 1974; R.C.M. 1947, 31-184; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 3, Ch. 338, L. 1995.

Cross-References

Powers of judges at chambers, 3-5-311.

General duties of Clerk of District Court, 3-5-501.

Preliminary hearings, Rule 12(d), M.R.Civ.P. (see Title 25, ch. 20).

Surrender and return of license, 61-5-209.

61-11-211. Department to revoke license of habitual offender — removal of points upon revocation. After it declares a person to be a habitual offender, the department shall revoke the person's driver's license or driving privilege for a period of 3 years from the date of the declaration, subject to the provisions of 61-2-302. The department shall remove from the person's record the habitual offender points upon which the habitual traffic offender designation was based.

History: En. 31-184.1 by Sec. 1, Ch. 176, L. 1975; R.C.M. 1947, 31-184.1; amd. Sec. 91, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 390, L. 1991; amd. Sec. 4, Ch. 338, L. 1995.

Cross-References

Mandatory revocation of license upon proper authority, 61-5-205.

Period of suspension or revocation, 61-5-208.

61-11-212. Penalties. A person who has been declared to be a habitual traffic offender may not be issued a license to operate a motor vehicle in this state until:

(1) a period of 3 years has elapsed from the date of the declaration, subject to the provisions of 61-2-302;

(2) the person has met the requirements of all applicable laws and rules relating to the licensing of motor vehicle operators in this state; and

(3) the person files with the department, and maintains for a period of 3 years, proof of financial responsibility in the limits required by law.

History: En. 31-185 by Sec. 11, Ch. 362, L. 1974; R.C.M. 1947, 31-185; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 2, Ch. 390, L. 1991; amd. Sec. 5, Ch. 338, L. 1995.

Cross-References

Driver licensing provisions, Title 61, ch. 5, part 1.

Period of suspension or revocation, 61-5-208.

When proof of financial responsibility required, 61-6-131.

61-11-213. Habitual traffic offender operating motor vehicle guilty of misdemeanor. A person who is declared to be a habitual traffic offender under this part who operates a motor vehicle in this state during the period of revocation of the person's driver's license or driving privileges is guilty of a misdemeanor and upon conviction shall be imprisoned for a period of not less than 14 days or more than 1 year or fined not more than $1,000, or both, and the department, upon receiving a record of the conviction of a person under this section, shall extend the period of revocation for an additional 1 year. However, in cases in which the prohibited operation of a motor vehicle by a habitual traffic offender is necessitated in a situation of extreme emergency in order to save life, limb, or property, the person may not be considered guilty of a violation under this part.

History: En. 31-187 by Sec. 13, Ch. 362, L. 1974; R.C.M. 1947, 31-187; amd. Sec. 3, Ch. 390, L. 1991; amd. Sec. 6, Ch. 338, L. 1995.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Driving while license suspended or revoked — penalty, 61-5-212.

61-11-214. Repealed. Sec. 4, Ch. 390, L. 1991.

History: En. 31-188 by Sec. 14, Ch. 362, L. 1974; amd. Sec. 1, Ch. 109, L. 1975; R.C.M. 1947, 31-188.

61-11-215. Construction. Nothing contained in this part shall be construed as to repeal, modify, or amend any other laws or parts of laws, or any existing ordinance of any political subdivision relating to the operation or licensing of motor vehicles, the licensing of persons to operate motor vehicles or providing penalties for the violation thereof; nor shall anything in this part be construed so as to preclude the exercise of regulatory powers of any division, agency, department, or political subdivision of this state or of the federal government having the statutory power to regulate the operation and licensing of motor vehicles and the licensing of motor vehicle operators.

History: En. 31-189 by Sec. 15, Ch. 362, L. 1974; R.C.M. 1947, 31-189.

CHAPTER 12

MISCELLANEOUS PROVISIONS

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61-12-702. Court costs — fees and expenses of counties.
61-12-703. Repealed.

Part 1
Powers of Local Authorities

Part Cross-References

County roads, Title 7, ch. 14, parts 21 through 26.

Municipal trafficways and public grounds, Title 7, ch. 14, part 41.

61-12-101. Powers of local authorities to regulate traffic. The provisions of chapter 8 and chapter 9 shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

(1) regulating the standing or parking of vehicles;

(2) regulating the traffic by means of police officers or traffic-control devices;

(3) regulating or prohibiting processions or assemblages on the highways;

(4) designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction;

(5) regulating the speed of vehicles in public parks;

(6) designating any highway as a through highway and requiring that all the vehicles stop before entering or crossing the same, designating any intersection as a stop intersection, and requiring all vehicles to stop at one or more entrances to such intersections;

(7) restricting the use of highways as authorized in 61-10-128(2);

(8) regulating the operation of bicycles and requiring the registration and licensing of same, including the requirement of a registration fee;

(9) regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections;

(10) altering the speed limits as authorized herein;

(11) regulating the driving of vehicles by any person who is an habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree which renders him incapable of safely driving a vehicle within the incorporated limits of any city or town;

(12) regulating or prohibiting any person who is under the influence of intoxicating liquor from driving or being in actual physical control of any vehicle within the incorporated limits of any city or town;

(13) regulating or prohibiting the driving of vehicles by any person in a willful or wanton disregard for the safety of persons or property within the incorporated limits of any city or town;

(14) enacting as ordinances any and all provisions of chapter 8 or chapter 9 and any and all other laws regulating traffic, pedestrians, vehicles, and operators thereof, not in conflict with state law or federal regulations and to enforce the same within their jurisdiction.

History: En. Sec. 28, Ch. 263, L. 1955; amd. Sec. 2, Ch. 201, L. 1957; amd. Sec. 1, Ch. 240, L. 1959; R.C.M. 1947, 32-2131.

Cross-References

Municipal trafficways and public grounds, Title 7, ch. 14, part 41.

Municipal parking, Title 7, ch. 14, part 45.

Through highway defined, 61-1-210.

Intersection defined, 61-1-212.

Stop, stopping, standing, and parking defined, 61-1-407.

Traffic provisions uniform throughout state — power of local authorities, 61-8-103.

Local traffic-control devices, 61-8-206.

When local authorities may and shall alter speed limits, 61-8-310.

Additional parking regulations, 61-8-355.

61-12-102. Private parking services — parking citations. (1) As used in this section, the following definitions apply:

(a) “Local government” means a municipality, if the private parking service operates parking services within a municipality, or a county, if such services are not operated within a municipality.

(b) “Private parking service” means the service of providing areas for parking motor vehicles, as defined in 61-1-102, by the general public for compensation and includes such services conducted:

(i) on private property; or

(ii) on public property under contract or agreement with the local government.

(2) A local government may by ordinance allow a private parking service to impound a motor vehicle. A motor vehicle may not be impounded by attaching a device that makes the motor vehicle immobile.

(3) A private parking service may enter into an agreement with the local government to authorize employees of the private parking service to issue citations for parking violations as defined by state, municipal, or county laws, which occur within the boundaries of the private parking service's parking areas. All such citations must be considered within the jurisdiction of the local government and must be handled in the same manner as citations issued by peace officers thereof.

History: **En. Sec. 1, Ch. 215, L. 1987.**

Part 2

Enforcement by Department of Transportation Personnel

Part Cross-References

Duties of Department of Transportation, 60-2-202.

61-12-201. Appointment of employees and out-of-state personnel as peace officers — definition. (1) The director of transportation may appoint employees of the department as peace officers to carry out this part. The employees appointed may include only those employees of the department who are employed in the administration of the motor carrier services functions of the department and employees of other states. Out-of-state personnel may be appointed only for the purpose of enforcing gross vehicle weight laws at joint weigh station facilities. Each employee appointed must be issued a certificate of appointment and execute an oath of office, which must be entered into the records of the department.

(2) The department may enter into joint weigh station agreements with other states. If the department enters into a joint weigh station agreement with another state, the department may not reduce staff levels in the motor carrier services division of the department as a result of the agreement but may reassign staff. However, this subsection does not apply to a reduction in force for the department as a whole.

(3) As used in this part, “department” means the department of transportation.

History: En. Sec. 1, Ch. 242, L. 1971; amd. Sec. 42, Ch. 316, L. 1974; R.C.M. 1947, 32-1632; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 19, Ch. 575, L. 1993; amd. Sec. 1, Ch. 360, L. 1995; amd. Sec. 256, Ch. 42, L. 1997.

Cross-References

Oaths, Title 1, ch. 6, part 1.

Public records, Title 2, ch. 6.

Peace officer defined, 45-2-101.

Ports of entry and checking stations, Title 60, ch. 2, part 3.

Officers authorized to weigh vehicles and require removal of excessive loads, 61-10-141.

Size, weight, and load — enforcement, 61-10-231.

61-12-202. Training of department peace officers — rules. (1) The department shall provide such training as required to qualify those employees to competently perform their duties under this part and shall adopt such rules as are required and necessary for qualification of those employees as peace officers.

(2) An employee may not make arrests until he has successfully completed such training as required by the department.

History: En. Secs. 2, 3, Ch. 242, L. 1971; amd. Secs. 43, 44, Ch. 316, L. 1974; R.C.M. 1947, 32-1633, 32-1634.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Functions of Board of Crime Control — qualifications for peace officers, 44-4-301.

Arrest by peace officer, Title 46, ch. 6, part 4.

61-12-203. Official attire required for making arrests and carrying firearms. Qualified employees may make arrests throughout the state only when dressed in official uniform and displaying the official badge authorized by the department. Authorized employees may not carry firearms unless officially attired.

History: En. Sec. 4, Ch. 242, L. 1971; amd. Sec. 45, Ch. 316, L. 1974; R.C.M. 1947, 32-1635.

61-12-204. Identification badge and uniform — safety equipment. (1) Employees of the department engaged in the enforcement of this part shall wear and prominently display an identification badge or device with the employee's name and title shown on the identification badge or device. The department may authorize uniform dress for department employees engaged in such enforcement.

(2) The department may issue soft body armor to an employee engaged in the enforcement of this part upon request of the employee after the employee's appointment as a peace officer.

History: En. Sec. 6, Ch. 242, L. 1971; amd. Sec. 47, Ch. 316, L. 1974; R.C.M. 1947, 32-1637; amd. Sec. 1, Ch. 333, L. 1991.

61-12-205. Power to inspect vehicle registration, receipts, and other documents. Employees of the department appointed under 61-12-201 may when officially dressed make reasonable inspection of vehicle registration receipts, department receipts and registrations, special permits, and other documents required to be carried in or for a vehicle traveling on the public highways of Montana.

History: En. Sec. 5, Ch. 242, L. 1971; amd. Sec. 46, Ch. 316, L. 1974; R.C.M. 1947, 32-1636.

Cross-References

Registration, Title 61, ch. 3, part 3.

Standards, permits, and fees, Title 61, ch. 10, part 1.

Officers authorized to weigh vehicles and require removal of excessive loads, 61-10-141.

Size, weight, and load — enforcement, 61-10-231.

61-12-206. Offenses for which arrest authorized. Employees appointed under 61-12-201 may make arrests for violations of the following statutory provisions:

(1) chapters 3 and 5 of this title, but only if the vehicle involved is subject to 61-10-141;
(2) chapter 10 of this title;
(3) part 3, chapter 4, of this title;
(4) 15-24-201 through 15-24-205;
(5) Title 15, chapter 70, parts 2 and 3;
(6) 44-1-1005 and safety rules adopted under that section;
(7) Title 69, chapter 12.

History: En. Sec. 8, Ch. 242, L. 1971; amd. Sec. 49, Ch. 316, L. 1974; R.C.M. 1947, 32-1639; amd. Sec. 5, Ch. 39, L. 1981; amd. Sec. 1, Ch. 100, L. 1991; amd. Sec. 20, Ch. 575, L. 1993; amd. Sec. 19, Ch. 10, Sp. L. November 1993; amd. Sec. 2, Ch. 360, L. 1995; amd. Sec. 4, Ch. 538, L. 1995; amd. Sec. 16, Ch. 125, L. 1997.

Cross-References

Arrest, Title 46, ch. 6.

61-12-207. Cooperation with other agencies. Such employees of the department shall cooperate with other law enforcement agencies.

History: En. Sec. 9, Ch. 242, L. 1971; amd. Sec. 50, Ch. 316, L. 1974; R.C.M. 1947, 32-1640.

Cross-References

Mutual assistance — rights of assisting officers, Title 44, ch. 11, part 1.

61-12-208. Duty upon making arrest — power to fix and accept bail. Employees appointed under 61-12-201, upon making an arrest, shall deliver to the offender a form of notice to appear, describing the nature of the offense, with instructions on the notice for the offender to report to the nearest justice of the peace. The employee may accept a deposit for appearance justifiable for the offense charged. The person who is arrested may be detained for a reasonable time for the purpose of issuing the notice or of awaiting the arrival of another peace officer who has been called to the scene, or the person may be transported, as provided in 46-7-101. If the employee accepts bail, the employee shall give a signed receipt to the offender, setting forth the amount received. The employee shall then deliver the bail money to the justice of the peace before whom the offender is to appear, and the justice of the peace shall give a receipt to the employee for the amount of bail money delivered. After the filing of the complaint and appearance of the defendant, the justice of the peace shall assume jurisdiction and may set and accept further appearance bail bond.

History: En. Sec. 10, Ch. 242, L. 1971; amd. Sec. 51, Ch. 316, L. 1974; R.C.M. 1947, 32-1641; amd. Sec. 92, Ch. 421, L. 1979; amd. Sec. 3, Ch. 360, L. 1995.

Cross-References

Duties of Justices of the Peace, 3-10-221.

Justices of the Peace — collection and payment of money, 3-10-222.

Procedure when patrol officer accepts bail, 44-1-1102.

Arrest by peace officer, Title 46, ch. 6, part 4.

Bail, Title 46, ch. 9.

Part 3
Motor Club Service Companies

Part Cross-References
Motor vehicle liability insurance, Title 33, ch. 23, part 2.

61-12-301. Terms defined. The following words and phrases, when used in this part, shall for the purpose of this part have the meanings respectively ascribed to them in this section, except in those instances where the context of the part clearly indicates that they shall have a different meaning:

(1) "Agent" means whoever solicits the purchase of service contracts, as herein defined, or transmits for another any such contract or application therefor to or from the company, or acts or aids in any manner in the delivery or negotiation of any such contract, or of the renewal or continuance thereof.

(2) "Bail bond service" means any act or acts by a company, as herein defined, the purpose of which is to furnish or procure for any person accused of violation of any law of this state a cash deposit, bond, or other undertaking required by law in order that the accused might enjoy his personal freedom pending trial.

(3) "Buying and selling service" means any act or acts of a company, as herein defined, whereby the holder of a service contract with any such company is aided in any way in the purchase or sale of an automobile.

(4) "Commissioner" means the commissioner of insurance of the state of Montana or his assistants or deputies or other persons authorized to act for him.

(5) "Company" means any person, firm, partnership, company, association, or corporation engaged in selling, furnishing, or procuring, either as principal or agent, for a consideration, motor club service as herein defined.

(6) "Discount service" means any act or acts by a company, as herein defined, resulting in the giving of special discounts, rebates, or reductions of price on gasoline, oil, repairs, insurance, parts, accessories, or service for motor vehicles to holders of service contracts with any such company.

(7) "Emergency road service" means any act or acts by a company, as herein defined, consisting of the adjustment, repair, or replacement of the equipment, tires, or mechanical parts of any automobile so as to permit it to be operated under its own power.

(8) "Financial service" means any act or acts by a company, as herein defined, whereby loans or other advances of money, with or without security, are made to holders of service contracts with any such company.

(9) "Legal service" means any act or acts by a company, as herein defined, consisting of the hiring, retaining, engaging, or appointing of an attorney or other person to give professional advice to or represent holders of service contracts with any such company in any court, as the result of liability incurred by the right of action accruing to the holder of a service contract as a result of the ownership, operation, use, or maintenance of a motor vehicle.

(10) "Map service" means any act or acts by a company, as herein defined, by which road maps are furnished without cost to holders of service contracts with any such company.

(11) "Motor club service" means the rendering, furnishing, or procuring of towing service, emergency road service, insurance service, bail bond service, legal service, discount service, financial service, buying and selling service, theft service, map service, and touring service, or any three or more thereof, as herein defined, to any person or persons in connection with the ownership, operation, use, or maintenance of a motor vehicle by such other person or persons in consideration of such other person or persons being or becoming a member or members of any company rendering, procuring, or furnishing the same, or being or becoming in any manner affiliated therewith, or being or becoming entitled to receive membership or other motor club service therefrom by virtue of any agreement or understanding with any such company.

(12) "Service contract" means any agreement or understanding whereby any company, as herein defined, for a consideration promises to render, furnish, or procure for any other person or persons, whether they be members of such company or otherwise, motor club service, as herein defined.

(13) "Theft service" means any act or acts by a company, as herein defined, the purpose of which is to locate, identify, or recover a motor vehicle owned or controlled by the holder of a service contract with any such company which has been or may be stolen or to detect or apprehend the person guilty of such theft.

(14) "Touring service" means any act or acts by a company, as herein defined, by which touring information is furnished without cost to holders of service contracts with any such company.

(15) "Towing service" means any act or acts by a company, as herein defined, consisting of the drafting or moving of a motor vehicle from one place to another under other than its own power.

History: En. Sec. 1, Ch. 131, L. 1931; re-en. Sec. 4211.1, R.C.M. 1935; R.C.M. 1947, 66-1101.

Cross-References

Insurance, Title 33.

Insurance Commissioner and Department — powers and duties, Title 33, ch. 1, part 3.

Theft, 45-6-301.

Bail, Title 46, ch. 9.

61-12-302. Companies and agents to be licensed. No company or any agent, as herein defined, doing business in this state shall execute, issue, or deliver any service contract to any person or persons owning or operating motor vehicles without first having obtained a license from the commissioner as provided for in this part, nor shall any such company or agent collect or receive from any person or persons in advance of the execution, issuance, or delivery of any such service contract any money or other thing of value upon any promise or agreement to execute, issue, or deliver any such service contract without first having obtained a license from said commissioner as provided for in this part.

History: En. Sec. 2, Ch. 131, L. 1931; re-en. Sec. 4211.2, R.C.M. 1935; R.C.M. 1947, 66-1102.

Cross-References

Authorization of insurers, Title 33, ch. 2, part 1.

61-12-303. Requirements for license. (1) The commissioner may not issue a license to a company until the company has filed the following:

(a) a formal application in the form and detail that the commissioner may require, executed under oath by its president or other principal officer;

(b) a copy of the form of its contract;

(c) a certified copy of its charter or articles of incorporation and its bylaws, if any;

(d) a financial statement in the form and detail that the commissioner may require, executed on oath by its president or other principal officer;

(e) a certificate from the commissioner that it has complied with 61-12-304 in all cases in which a deposit of cash or a bond is required by this part;

(f) if the company is a corporation, a certificate from the secretary of state that the company has complied with this state's corporate laws.

(2) The commissioner may not issue a license to a company until the company has paid to the commissioner $100 as an annual license fee or the pro rata portion of the $100 necessary to be paid to the end of the current calendar year from the date of the application for the license.

(3) The commissioner may not issue a license to a company until the company has satisfied by an examination and evidence that the commissioner may require that the company has complied with the laws of the state, that its management is trustworthy and competent, and that the company is financially responsible.

History: En. Sec. 3, Ch. 131, L. 1931; re-en. Sec. 4211.3, R.C.M. 1935; R.C.M. 1947, 66-1103; amd. Sec. 19, Ch. 798, L. 1991; amd. Sec. 63, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in (1)(f) after "certificate from the" substituted "secretary of state" for "corporation commissioner of the state of Montana"; in (3) at end inserted "and that the company is financially responsible"; and made minor changes in style. Amendment effective October 1, 1999.

61-12-304. Deposits required. The commissioner may not grant a license to a company until it has deposited with the commissioner the sum of $25,000 in cash or in lieu thereof a bond in a form prescribed by the commissioner payable to the state of Montana in the sum of $25,000, with surety approved by the commissioner, conditioned upon the faithful performance of its service contracts and payment of any fines or penalties levied against it for failure to comply with this part. However, when any company proves to the commissioner that it has been in continuous, active operation in the state for a period of more than the preceding 5 years and has a paid membership of more than 5,000 members within the state or that there are more than 5,000 holders of its service contracts within the state and that it is being properly managed, is rendering to its members the services promised to them, and is financially responsible, the commissioner may not require a cash deposit or bond while the company remains in that condition. The cash deposit or bond is not a penalty but is for the protection of the public only.

History: En. Sec. 4, Ch. 131, L. 1931; re-en. Sec. 4211.4, R.C.M. 1935; R.C.M. 1947, 66-1104; amd. Sec. 20, Ch. 798, L. 1991.

Cross-References

Insurance companies — deposit requirement, 33-2-111.

61-12-305. Continuance of license. Subject to payment by January 1 of each year of the annual license fee required under 61-12-303, each license continues in force as long as the company is entitled to the license under this part or until the license is revoked, suspended, or otherwise terminated.

History: En. Sec. 5, Ch. 131, L. 1931; re-en. Sec. 4211.5, R.C.M. 1935; R.C.M. 1947, 66-1105; amd. Sec. 21, Ch. 798, L. 1991.

Cross-References

Insurance companies — continuance, expiration, reinstatement, and amendment of certificate of authority, 33-2-117.

61-12-306. Revocation of license. If the commissioner shall, at any time for cause shown and after a hearing, determine that a company has violated any provision or provisions of this part or that it is insolvent or that its assets are less than its liabilities or that it or its officers refuse to submit to an examination or that it is transacting business fraudulently or that its management or business methods are improper or hazardous to the holders of its service contracts, he shall thereupon revoke or suspend its license and shall give notice thereof to the public in such manner as he may deem proper.

History: En. Sec. 6, Ch. 131, L. 1931; re-en. Sec. 4211.6, R.C.M. 1935; R.C.M. 1947, 66-1106.

Cross-References

Insurance companies — mandatory revocation or suspension of certificate of authority, 33-2-118.

61-12-307. Financial statement to be filed. Every company shall annually, on or before February 1 of each year, file with the commissioner a financial statement in such form and detail as he may prescribe, executed on oath by its president or other principal officer, showing its financial condition on December 31 of the preceding year.

History: En. Sec. 7, Ch. 131, L. 1931; re-en. Sec. 4211.7, R.C.M. 1935; R.C.M. 1947, 66-1107.

Cross-References

Insurance companies — annual statement, 33-2-701.

61-12-308. Service contract to be filed with commissioner. No service contract shall be executed, issued, or delivered in this state until a copy of the form thereof has been on file for 30 days with the commissioner, unless before the expiration of said 30 days he shall have approved the form in writing; nor shall any service contract be executed, issued, or delivered at any time in this state if the commissioner notified the company in writing within said 30 days that in his opinion the form of the contract does not comply with the laws of this state, specifying the reasons therefor.

History: En. Sec. 8, Ch. 131, L. 1931; re-en. Sec. 4211.8, R.C.M. 1935; R.C.M. 1947, 66-1108.

Cross-References

Commissioner — records and certificates, 33-1-312.

61-12-309. Contracts to be in duplicate. Every service contract executed, issued, or delivered in this state shall be made in duplicate, and shall be signed by the company issuing the same, or by its duly authorized agent, and by the party purchasing the same, and one copy thereof shall be kept by said company, and the other copy shall be delivered to the party purchasing the same.

History: En. Sec. 9, Ch. 131, L. 1931; re-en. Sec. 4211.9, R.C.M. 1935; R.C.M. 1947, 66-1109.

Cross-References

Insurance — execution of policies, 33-15-306.

61-12-310. Form of contract. No service contract shall be executed, issued, or delivered in this state unless it contains the following:

(1) the exact corporate or other name of the company;

(2) the exact location of its home office and of its usual place of business in this state, giving street number and city;

(3) a provision that the contract may be canceled at any time by either the company or the holder, and that the holder shall, if he has actually paid the consideration, thereupon be entitled to the unused portion of the consideration paid for such contract, calculated on a pro rata basis without any deductions;

(4) a provision plainly specifying the services promised and that the holder shall not be required to pay any sum for any services specified in the contract in addition to the amount specified in the contract, and further specifying the territory wherein such services are to be rendered, and the date when such service shall commence.

History: En. Sec. 10, Ch. 131, L. 1931; re-en. Sec. 4211.10, R.C.M. 1935; R.C.M. 1947, 66-1110.

Cross-References

Insurance — policy provisions, Title 33, ch. 15, part 3.

61-12-311. Companies to be licensed. No person shall solicit or aid in the solicitation of another person to purchase a service contract issued by a company not duly licensed under this part.

History: En. Sec. 11, Ch. 131, L. 1931; re-en. Sec. 4211.11, R.C.M. 1935; R.C.M. 1947, 66-1111.

Cross-References

Authorization of insurers, Title 33, ch. 2, part 1.

61-12-312. Contract not to be misrepresented. No company and no officer or agent thereof shall orally or in writing misrepresent the terms, benefits, or privileges of any service contract issued or to be issued by it.

History: En. Sec. 12, Ch. 131, L. 1931; re-en. Sec. 4211.12, R.C.M. 1935; R.C.M. 1947, 66-1112.

Cross-References

Insurance policy must contain entire contract, 33-15-302.

61-12-313. Contracts binding on company although not complying with part. Any service contract made, issued, or delivered contrary to any provision of this part shall nevertheless be valid and binding on the company.

History: En. Sec. 13, Ch. 131, L. 1931; re-en. Sec. 4211.13, R.C.M. 1935; R.C.M. 1947, 66-1113.

Cross-References

Validity of noncomplying insurance forms, 33-15-315.

61-12-314. Applicability. Nothing in this part shall apply to a duly authorized attorney at law acting in the usual course of his profession or to any insurance company, bonding company, or surety company, now or hereafter duly and regularly licensed and doing business as such under the laws of the state.

History: En. Sec. 14, Ch. 131, L. 1931; re-en. Sec. 4211.14, R.C.M. 1935; R.C.M. 1947, 66-1114.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Insurance, Title 33.

Attorneys at law, Title 37, ch. 61.

61-12-315. Penalty for violation. If any person shall violate the provisions of this part, such person shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $500 or by imprisonment in the county jail for not more than 6 months or by both such fine and imprisonment.

History: En. Sec. 15, Ch. 131, L. 1931; re-en. Sec. 4211.15, R.C.M. 1935; R.C.M. 1947, 66-1115.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Part 4

Removal and Sale of Abandoned Vehicles

Part Cross-References

Sale of attached property, Title 27, ch. 18, part 8.

Motor vehicle recycling and disposal, Title 75, ch. 10, part 5.

61-12-401. Taking vehicle into custody. (1) The following law enforcement agencies may take into custody any motor vehicle found abandoned for a period of 48 hours or more on a public highway or for a period of 5 days or more on a city street, public property, or private property:

(a) the Montana highway patrol if the vehicle is upon the right-of-way of any public highway other than a county road;

(b) the sheriff of the county if the vehicle is upon the right-of-way of any county road;

(c) the city police if the vehicle is upon a city street.

(2) The Montana highway patrol, sheriff of the county, or city police may use their personnel, equipment, and facilities for the removal and storage of the vehicle or may hire other personnel, equipment, and facilities for those purposes. The sheriff of the county or the chief of police of the city in which the vehicle is being stored may request reimbursement of the hired removal charge from the motor vehicle recycling and disposal program of the department of environmental quality in an amount and manner established by rules adopted by the department of environmental quality for this purpose.

(3) At the request of the owner or person in lawful possession or control of the private property, the sheriff of the county in which the vehicle is located

or the city police of the city in which the vehicle is located may remove and hold it in the manner and upon the conditions provided in subsections (1) and (2).

History: En. Sec. 2, Ch. 288, L. 1967; amd. Sec. 2, Ch. 169, L. 1969; R.C.M. 1947, 53-902; amd. Sec. 1, Ch. 445, L. 1979; amd. Sec. 6, Ch. 88, L. 1987; amd. Sec. 1, Ch. 513, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 513 at end of (1)(b) deleted "within the county"; at end of (1)(c) deleted "within the city"; in (2) inserted second sentence concerning reimbursement from motor vehicle recycling and disposal program; and made minor changes in style. Amendment effective July 1, 1999.

Cross-References

Sheriff — duties, 7-32-2121.

Municipal police force, Title 7, ch. 32, part 41.

Highway patrol jurisdiction, Title 44, ch. 1, part 10.

Officers or highway patrol officers authorized to remove illegally stopped vehicles, 61-8-705.

61-12-402. Notice to owner. (1) Within 72 hours after a vehicle is removed and held by or at the direction of the Montana highway patrol, the highway patrol shall notify the sheriff of the county or the chief of police of the city in which the vehicle is being stored of where and when the vehicle was taken into custody and of where the vehicle is being stored. In addition, the Montana highway patrol shall furnish the sheriff or the chief of police:

(a) a complete description of the vehicle, including year, make, model, serial number, and license number if available;

(b) any costs incurred to that date in the removal, storage, and custody of the vehicle; and

(c) any available information concerning the vehicle's ownership.

(2) The highway patrol shall notify the sheriff of the county or the chief of police of the city in which the vehicle was taken into custody of the location at which the vehicle is being stored if the vehicle was removed to a different county.

(3) The sheriff or the city police in the jurisdiction where the vehicle is being stored shall make reasonable efforts to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle taken into custody under 61-12-401. If a name and address are ascertained, the sheriff or the city police shall notify the owner, lienholder, or person of the location of the vehicle.

(4) If the vehicle is registered in the office of the department, notice is considered to have been given when a certified letter addressed to the registered owner of the vehicle and lienholder, if any, at the latest address shown by the records in the office of the department, return receipt requested and postage prepaid, is mailed at least 30 days before the vehicle is sold.

(5) If the identity of the last-registered owner cannot be determined, if the registration does not contain an address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by one publication in one newspaper of general circulation in the county where the motor vehicle is being stored is sufficient to meet all requirements of notice pursuant to this part. The notice by publication may contain multiple listings of abandoned vehicles. The notice must be provided in the same manner as prescribed in 25-13-701(1)(b).

(6) If the abandoned vehicle is in the possession of a motor vehicle wrecking facility licensed under 75-10-511, the wrecking facility may make the

required search to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall give the notices required in subsections (3) through (5). The wrecking facility shall deliver to the sheriff or the city police a certificate describing the efforts made to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall deliver to the sheriff or the city police proof of the notice given.

(7) A vehicle found by law enforcement officials to be a junk vehicle, as defined by 75-10-501, and that has a value of $500 or less may be directly submitted for disposal in accordance with the provisions of Title 75, chapter 10, part 5, upon a release given by the sheriff or the city police. The county representative designated to implement the county motor vehicle recycling and disposal program pursuant to 75-10-521 for the county where the vehicle is being stored shall determine the value of the vehicle. In the release, the sheriff or the city police shall include a description of the vehicle, including year, make, model, serial number, and license number if available. A release provided by the sheriff or the city police under this section must be transmitted to the motor vehicle wrecking facility and must be considered by that facility to meet the requirements for records under 75-10-512 and 75-10-513. Vehicles described in this section may be submitted for disposal without notice and without a required holding period.

History: En. Sec. 3, Ch. 288, L. 1967; amd. Sec. 1, Ch. 53, L. 1974; R.C.M. 1947, 53-903; amd. Sec. 1, Ch. 191, L. 1979; amd. Sec. 1, Ch. 355, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 7, Ch. 88, L. 1987; amd. Sec. 134, Ch. 27, Sp. L. November 1993; amd. Sec. 16, Ch. 283, L. 1995; amd. Sec. 38, Ch. 496, L. 1997; amd. Sec. 2, Ch. 513, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 513 in (1) in first sentence after "county" inserted "or the chief of police of the city" and at end substituted "is being stored of where and when the vehicle was taken into custody and of where the vehicle is being stored" for "was located at the time it was taken into custody of the place where the vehicle is being held" and at end of second sentence inserted "of the chief of police"; inserted (2) concerning notification to sheriff or chief of police by highway patrol; in first sentence of (3) after "police" inserted "in the jurisdiction where the vehicle is being stored"; in (5) near end of first sentence substitute "is being stored" for "was abandoned"; in (7) near middle of first sentence after "less" deleted "as determined by the department" and inserted second sentence concerning appropriate person to determine value; and made minor changes in style. Amendment effective July 1, 1999.

Cross-References

Notice — actual and constructive, 1-1-217.

Filing of security interests, rights, procedure, and fees, 61-3-103.

Registrant as prima facie owner of vehicle, 61-3-105.

Certificates of registration, 61-3-322.

Junk vehicle disposal fee, 61-3-508.

61-12-403. Reclaiming vehicle. The owner, lienholder, or person entitled to possession of the vehicle may reclaim it at any time after it is taken into custody and before it is sold. The owner, lienholder, or person entitled to possession of the vehicle shall present to the sheriff of the county or the city police of the city where the vehicle is being stored satisfactory proof of ownership or right to possession and shall pay the costs and expenses incurred in the removal, storage, and custody of the vehicle. The person reclaiming the vehicle may not be required to pay storage charges for a period longer than 90 days.

History: En. Sec. 4, Ch. 288, L. 1967; R.C.M. 1947, 53-904; amd. Sec. 2, Ch. 355, L. 1985; amd. Sec. 8, Ch. 88, L. 1987; amd. Sec. 3, Ch. 513, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 513 near middle of second sentence substituted "is being stored" for "was located at the time it was taken into custody"; and made minor changes in style. Amendment effective July 1, 1999.

Cross-References

Fees of Sheriff for holding property, 7-32-2142.

Certificate of ownership, 61-3-202.

Involuntary deposit — how made, 70-6-103.

Liens — general provisions, Title 71, ch. 3, part 1.

61-12-404. Sale of vehicle if not reclaimed. (1) If a vehicle is not reclaimed, as provided in 61-12-403, within 30 days after notification by certified mail or prescribed publication, the sheriff of the county or the city police of the city in which the vehicle is being stored shall sell it at public auction in the manner provided in 25-13-701 through 25-13-709.

(2) After a vehicle has been sold pursuant to subsection (1), the former owner or person entitled to possession has no further right, title, claim, or interest in or to the vehicle.

History: En. Sec. 5, Ch. 288, L. 1967; R.C.M. 1947, 53-905; amd. Sec. 3, Ch. 355, L. 1985; amd. Sec. 4, Ch. 513, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 513 in (1) before "certified" deleted "registered or" and near end substituted "the vehicle is being stored" for "it is located at the time it was taken into custody"; and made minor changes in style. Amendment effective July 1, 1999.

Cross-References

Bailment — sale to pay costs of storage, 70-6-411.

61-12-405. Certificate of sale. (1) When any vehicle is so sold, the sheriff or the city police at the time of the payment of the purchase price shall execute a certificate of sale in duplicate and shall deliver the original certificate to the purchaser and retain the copy.

(2) The certificate of sale shall contain the name and address of the purchaser, the date of sale, the consideration paid, a description of the vehicle, and a stipulation that no warranty is made as to the condition or title of the vehicle.

History: En. Sec. 6, Ch. 288, L. 1967; R.C.M. 1947, 53-906; amd. Sec. 4, Ch. 355, L. 1985.

Cross-References

Sale of attached property, Title 27, ch. 18, part 8.

61-12-406. Issuing certificate of ownership. The department shall issue a certificate of ownership upon presentation by the purchaser of the certificate of sale and payment of the fees required by law.

History: En. Sec. 7, Ch. 288, L. 1967; R.C.M. 1947, 53-907; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Certificates of ownership, Title 61, ch. 3, part 2.

New registration required for transferred vehicle, 61-3-317.

61-12-407. Transmitting return of sale and balance of proceeds. (1) When any vehicle is sold as provided in 61-12-404 the sheriff or the city police shall transmit to the department and to the county treasurer or to the city treasurer, respectively, a return of sale setting forth a description of the vehicle, the purchase price, the name and address of the purchaser, the costs incurred in the sale, and the costs and expenses incurred in the removal, storage, and custody of the vehicle.

(2) With the return of sale, the sheriff shall transmit to the county treasurer or the city police shall transmit to the city treasurer the balance of the proceeds of the sale after deducting the costs incurred in the sale and the costs and expenses incurred in the removal, storage, and custody of the vehicle.

(3) Upon receipt of the return of sale and such balance from:

(a) the county sheriff, the county treasurer shall file the return in his office and deposit the balance in the county road fund on all vehicles seized by the sheriff or highway patrol; or

(b) the city police, the city treasurer shall file the return in his office and deposit the balance in the city street fund on all vehicles seized by the city police.

History: En. Sec. 8, Ch. 288, L. 1967; R.C.M. 1947, 53-908; amd. Sec. 5, Ch. 355, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 9, Ch. 88, L. 1987.

Cross-References

Duties of County Treasurer, 7-6-2111.

Duties of City Treasurer relating to finances, 7-6-4104.

City and county road funds, 7-14-2512.

Fees of Sheriff for holding property, 7-32-2142.

Sale of property subject to security interest — disposition of proceeds — security agreement, 27-18-804.

61-12-408. Penalty. Any person or persons violating the provisions of this part shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $25 or more than $300 or by imprisonment in the county jail for not less than 5 days or more than 90 days or by both fine and imprisonment.

History: En. Sec. 9, Ch. 288, L. 1967; R.C.M. 1947, 53-909(part).

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Part 5

Identification Cards

61-12-501. Authority of department to issue identification cards. The department may issue identification cards to any person.

History: En. Sec. 1, Ch. 53, L. 1971; R.C.M. 1947, 31-170; amd. Sec. 1, Ch. 495, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 2, Ch. 346, L. 1993.

Cross-References

Drivers' licenses — application of minors, 61-5-108.

Authority of Department to suspend licenses, 61-5-206.

61-12-502. Rules for identification cards. The department shall formulate and adopt reasonable rules for the application for and issuing of identification cards and cancellation thereof and shall require the furnishing of such information necessary for the purpose of this part.

History: En. Sec. 2, Ch. 53, L. 1971; R.C.M. 1947, 31-171; amd. Sec. 93, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

61-12-503. Agents for issuance of identification cards. The department shall have authority to appoint county treasurers and other qualified officers to act as its agents for the issuance of such identification cards.

History: En. Sec. 4, Ch. 53, L. 1971; R.C.M. 1947, 31-173; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References [illegible] Agency, Title 28, ch. 10.
Office of County Treasurer, 7-4-3002.

61-12-504. Fees for identification cards. (1) Fees not in excess of $8 for identification cards issued pursuant to this part must be collected and deposited in the general fund. A person with a disability, as defined in 39-30-103, may obtain a free identification card. An individual discharged from any correctional facility must be furnished a free identification card upon release, discharge, or parole.

(2) Each identification card expires on the anniversary of the date of birth of the holder 4 years after the date of issue.

History: En. Sec. 5, Ch. 53, L. 1971; R.C.M. 1947, 31-174; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 1, Ch. 503, L. 1985; amd. Secs. 4, 6, Ch. 5, Sp. L. January 1992; amd. Sec. 3, Ch. 346, L. 1993; amd. Sec. 74, Ch. 472, L. 1997.

Cross-References
Fund structure, 17-2-102.

Part 6

Jurisdiction Over Minors (Repealed. Sec. 5, Ch. 484, L. 1987)

Part Compiler's Comments

Histories of Repealed Sections:

61-12-601. En. Sec. 1, Ch. 215, L. 1959; amd. Sec. 1, Ch. 188, L. 1963; R.C.M. 1947, 32-21-163.

61-12-602. En. Sec. 2, Ch. 215, L. 1959; amd. Sec. 2, Ch. 188, L. 1963; R.C.M. 1947, 32-21-164.

61-12-603. En. Sec. 3, Ch. 215, L. 1959; R.C.M. 1947, 32-21-165.

Part 7

Disposition of Fines

61-12-701. Disposition of fines and forfeitures. Except as provided in 61-10-148(2), all fines and forfeitures collected in any court, except a justice's court, for violation of the laws and regulations relating to the use of state highways and the operation of vehicles thereon, if the apprehension or arrest was by a highway patrol officer, must be paid to the state treasurer and by him credited to the general fund of the state or, if the apprehension or arrest was by a sheriff or deputy sheriff, must be paid to the county treasurer for deposit in the county general fund, except for that portion of the fines otherwise allocated by law which must be paid into the appropriate accounts in the state special revenue fund.

History: En. Sec. 14, Ch. 199, L. 1943; amd. Sec. 10, Ch. 226, L. 1965; amd. Sec. 9, Ch. 214, L. 1969; R.C.M. 1947, 31-114; amd. Sec. 94, Ch. 421, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 327, L. 1985; amd. Sec. 1, Ch. 316, L. 1987; amd. Sec. 41, Ch. 557, L. 1987; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References
Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.
Office of County Treasurer, Title 7, ch. 6, part 21.

General fiscal duties of State Treasurer, 17-1-111.

Fund structure, 17-2-102.

State traffic education account — proceeds earmarked for account, 20-7-504.

Disposition of size, weight, and load fines, 61-10-148.

61-12-702. Court costs — fees and expenses of counties. The court, after deducting all costs and fees, shall immediately transmit the balance of the fine to the state or county treasurer as provided by law. The expenses of the county, except fees of officers who are paid a regular salary, are a proper claim against the state or county and claims must be paid in the manner provided by law out of the funds appropriated for such purposes.

History: En. Sec. 15, Ch. 199, L. 1943; R.C.M. 1947, 31-115; amd. Sec. 2, Ch. 327, L. 1985.

Cross-References

Claims against county, Title 7, ch. 6, part 24.

Claims against state, Title 17, ch. 8, part 2.

Court costs, Title 25, ch. 10.

61-12-703. Repealed. Sec. 5, Ch. 484, L. 1987.

History: En. 95-2229 by Sec. 11, Ch. 513, L. 1973; amd. Sec. 40, Ch. 184, L. 1977; R.C.M. 1947, 95-2229; amd. Sec. 95, Ch. 421, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 387, L. 1985.

CHAPTER 13

SEATBELTS

Part 1 — Montana Seatbelt Use Act

61-13-101. Short title.
61-13-102. Definitions.
61-13-103. Seatbelt use required — exceptions.
61-13-104. Penalty — no record permitted.
61-13-105. Education program.
61-13-106. Evidence not admissible.

Part 1

Montana Seatbelt Use Act

61-13-101. Short title. This part may be cited as the "Montana Seatbelt Use Act".

History: En. Sec. 1, Ch. 439, L. 1987.

61-13-102. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of justice.

(2) "Highway" means the entire width between the boundary lines of each publicly maintained way when any part thereof is open to public use for vehicular travel.

(3) "Motor vehicle" means a vehicle propelled by its own power and designed primarily to transport persons or property upon the highways of the state.

(4) "Occupants" means the driver and passengers in a motor vehicle.

(5) "Seatbelt" means a system using a lap belt, a shoulder belt, or other belt or combination of belts installed in a motor vehicle to restrain occupants, which system conforms to federal motor vehicle safety standards.

History: **En. Sec. 2, Ch. 439, L. 1987.**

61-13-103. Seatbelt use required — exceptions. (1) No driver may operate a motor vehicle upon a highway of the state of Montana unless each occupant of a designated seating position is wearing a properly adjusted and fastened seatbelt.

(2) The provisions of this section do not apply to:

(a) an occupant of a motor vehicle who possesses a written statement from a licensed physician that he is unable to wear a seatbelt for medical reasons;

(b) an occupant of a motor vehicle in which all seatbelts are being used by other occupants;

(c) an operator of a motorcycle as defined in 61-1-105 or a motor-driven cycle as defined in 61-1-106;

(d) an occupant of a vehicle licensed as special mobile equipment as defined in 61-1-104;

(e) children subject to the provisions of 61-9-420; or

(f) an occupant who makes frequent stops with a motor vehicle in his official job duties and who may be exempted by the department.

(3) The department may adopt rules to implement subsection (2)(f).

(4) The department or its agent may not require a driver who may be in violation of this section to stop except upon reasonable cause to believe that he has violated another traffic regulation or that his vehicle is unsafe or not equipped as required by law.

History: **En. Sec. 3, Ch. 439, L. 1987.**

61-13-104. Penalty — no record permitted. (1) A driver who violates 61-13-103 must be fined $20, but the violation is not a misdemeanor pursuant to 45-2-101, 46-18-236, 61-8-104, or 61-8-711. A violation of 61-13-103 may not be counted as a moving violation for purposes of suspending a driver's license under 61-11-203(2)(m). Bond for this offense is $20, and no jail sentence may be imposed.

(2) No violation of 61-13-103 may be recorded or charged against the driver's record of a person violating 61-13-103, and no insurance company shall hold a violation of 61-13-103 against the insured, and there may be no increase in premiums due to a violation of 61-13-103.

History: **En. Sec. 4, Ch. 439, L. 1987; amd. Sec. 7, Ch. 365, L. 1993.**

61-13-105. Education program. The highway traffic safety division of the department shall continue its program for public information and education concerning the benefits of wearing seatbelts and include within such program the requirements of 61-13-103 and the penalty specified in 61-13-104.

History: **En. Sec. 5, Ch. 439, L. 1987.**

61-13-106. Evidence not admissible. Evidence of compliance or failure to comply with 61-13-103 is not admissible in any civil action for personal injury or property damage resulting from the use or operation of a motor vehicle, and failure to comply with 61-13-103 does not constitute negligence.

History: **En. Sec. 6, Ch. 439, L. 1987.**

TITLES 62 THROUGH 66

RESERVED

TITLE 67

AERONAUTICS

Ch.
1. General Provisions.
2. Department of Transportation — Aeronautical Powers and Duties.
3. Regulation and Licensing.
4. Noise, Height, and Land Use Regulation.
5. Airport Hazard Regulation.
6. Airport Zoning Act.
Chapters 7 through 9 reserved.
10. Municipal Airports.
11. Airport Authorities.

CHAPTER 1

GENERAL PROVISIONS

Part 1 — Definitions and Policy

67-1-101. Definitions.
67-1-102. Policy.
67-1-103. Board of aeronautics.
67-1-104. Governmental nature of aeronautical functions.
67-1-105. Penalties.

Part 2 — Uniform Principles

67-1-201. Short title.
67-1-202. State sovereignty in space.
67-1-203. Spatial ownership.
67-1-204. Lawfulness of flight and landings.
67-1-205. Penalties.
67-1-206. Interpretation.
67-1-207 through 67-1-210 reserved.
67-1-211. Alcohol concentration standards — evidence admissible — administration of tests.

Part 3 — Finance

67-1-301. Money — receipt and disbursement.
67-1-302. Industrial revenue projects.
67-1-303. Airline property tax — state airports.
67-1-304. Airport grants and loans.
67-1-305. Special aeronautical loan account.
67-1-306. Special aeronautical loan account.
67-1-307. Aeronautical loans.

Part 1
Definitions and Policy

67-1-101. Definitions. Unless the context requires otherwise, in this title the following definitions apply:

(1) “Aeronautics” means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the

design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, restricted landing areas, or other air navigation facilities; and air instruction.

(2) "Aeronautics instructor" means an individual engaged in giving instruction or offering to give instruction in aeronautics, either in flying or ground subjects, or both, for hire or reward, without advertising that occupation, without calling the facilities an "air school" or anything equivalent to an "air school", and without employing or using other instructors. It does not include an instructor in a public school or university of this state or an institution of higher learning accredited and approved for carrying on collegiate work while engaged in duties as an instructor.

(3) "Air carrier" means a person or corporation owning, controlling, operating, or managing aircraft as a scheduled common carrier of passengers or freight for compensation within this state.

(4) "Aircraft" means a contrivance used or designed for navigation of or flight in the air.

(5) "Aircrew" includes an individual who engages, as the person in command or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way; an individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances except for an individual employed outside the United States, an individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection with them, and an individual performing inspection or mechanical duties in connection with aircraft owned or operated by the individual; and an individual who serves in the capacity of aircraft dispatcher or air traffic control tower operator.

(6) "Air instruction" means the imparting of aeronautical information by an aeronautics instructor or in or by an air school or flying club.

(7) "Air navigation" means the operation or navigation of aircraft in the air space over this state or upon an airport or restricted landing area within this state.

(8) "Air navigation facility" means a facility used in, available for use in, or designed for use in aid of air navigation, including airports, restricted landing areas, and structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft or the safe and efficient operation or maintenance of an airport or restricted area and any combination of these facilities.

(9) "Airport" means an area of land or water, except a restricted landing area, that is designed for the landing and takeoff of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft or for receiving or discharging passengers or cargo, and all appurtenant areas used or suitable for airport buildings or other airport facilities and all appurtenant rights-of-way.

(10) "Airport and landing field" means any area of land or water, or both, that is used or is made available for the landing and takeoff of aircraft, owned, leased, controlled, operated, or maintained by the United States, the state of

Montana, or any county or municipality or any of the authorized agencies or branches of a county or municipality within the state of Montana.

(11) "Airport authority" or "authority" means a regional airport authority or municipal airport authority created under chapter 11 and the governing body of a municipality that has determined to exercise the powers of a municipal airport authority under 67-11-102.

(12) "Airport hazard" means a structure, object of natural growth, or use of land that obstructs the air space required for the flight of aircraft in landing or taking off at an airport or restricted landing area or is otherwise hazardous to landing or taking off.

(13) "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this title.

(14) "Airport protection privileges" means easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation of airports or restricted landing areas.

(15) "Air school" means a person engaged in giving or offering to give instruction in aeronautics, either in flying or ground subjects, or both, for or without hire or reward, and advertising or representing to the public that the person gives or offers to give that instruction. It does not include a public school or university of this state or an institution of higher learning accredited and approved for carrying on collegiate work.

(16) "Board" means the board of aeronautics provided for in 2-15-2506.

(17) "Bonds" means bonds, notes, interim certificates, debentures, or similar obligations issued by an authority under chapter 11.

(18) "Building or structure" means any edifice, structure, or construction of any kind, character, or description and any object of natural growth erected, constructed, grown, located or proposed to be erected, constructed, grown, or located within the area described in 67-5-201 hereof as safety zones, including any edifice, structure, or construction or object within the restricted zones erected, constructed, placed, or located on or over land or water, or both.

(19) "Civil aircraft" means an aircraft other than a public aircraft.

(20) "Commercial air operator" means any person owning, controlling, operating, or managing aircraft for any commercial purpose for compensation.

(21) "Department" means the department of transportation provided for in Title 2, chapter 15, part 25.

(22) "Established perimeter of an airport or landing field", for the purposes of computing all distances and elevations as contemplated by chapter 5, is the metes and bounds and elevations along the respective sides of the airport or landing field as determined by the United States government, the state of Montana, a county, a municipality, or any other public authority owning, leasing, controlling, operating, or maintaining the airport or landing field. The determination and definition must be evidenced by a plat showing the metes and bounds and elevations that must be filed in the records of the public authority for official purposes and subject to inspection and examination at all reasonable times by any interested persons.

(23) "Flying club" means a person other than an individual that, neither for profit nor reward, owns, leases, or uses one or more aircraft for the purpose of instruction or pleasure, or both.

(24) "Governing body" means a city commission, town council, or county commission and the boards, departments, and divisions of those entities, by whatever name they are known, that have charge of finances and management of a municipality or a county.

(25) "Height of buildings and structures" means, for the purposes of chapter 5, the vertical distance measured from the ground or surface level of the airport or landing field on the side adjacent to the building or structure to the level of the highest point of the building or structure.

(26) "Municipal airport authority" or "municipal authority" means a municipal airport authority created under 67-11-102.

(27) "Municipality" or "political subdivision" means a county, city, village, or town of this state and any other political subdivision, public corporation, authority, or district in this state authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities.

(28) "Navigable air space" means air space above the minimum altitudes of flight prescribed by the laws of this state or by regulations of the department.

(29) "Operation of aircraft" or "operate aircraft" means the use of aircraft for the purpose of air navigation and includes the navigation or piloting of aircraft. A person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, operates the aircraft.

(30) "Person" means an individual, firm, partnership, corporation (private, municipal, or public), company, association, joint-stock association, or body politic and includes a trustee, receiver, assignee, or other similar representative.

(31) "Public aircraft" means an aircraft used exclusively in the service of any government or of a political subdivision of a government, including the government of a state, territory, or possession of the United States, or the District of Columbia but not including a government-owned aircraft engaged in carrying persons or property for commercial purposes.

(32) "Real property" means lands, structures, buildings, and interests in land, including lands under water and riparian rights, and all things and rights usually included within the term real property, including not only fee simple absolute but also all lesser interests, such as easements, rights-of-way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property.

(33) "Regional airport authority" or "regional authority" means a regional airport authority created under 67-11-103.

(34) "Restricted landing area" means an area of land or water, or both, that is used or is made available for the landing and takeoff of aircraft, the use of which must, except in case of emergency, be only as provided by the department.

(35) "State airway" means a route in the navigable air space over and above the lands or waters of this state, designated by the department as a route suitable for air navigation.

(36) "Structure" means any object constructed or installed by a person, including but not limited to buildings, towers, smokestacks, and overhead transmission lines.

(37) "Tree" means any object of natural growth.

History: Ap. p. Sec. 3, Ch. 152, L. 1945; amd. Sec. 2, Ch. 348, L. 1974; amd. Sec. 2, Ch. 213, L. 1975; Sec. 1-102, R.C.M. 1947; Ap. p. Sec. 1, Ch. 122, L. 1967; amd. Sec. 18, Ch. 348, L. 1974; Sec. 1-311, R.C.M. 1947; Ap. p. Sec. 26, Ch. 348, L. 1974; Sec. 1-322.1, R.C.M. 1947; Ap. p. Sec. 6, Ch. 12, L. 1939; Sec. 1-706, R.C.M. 1947; Ap. p. Sec. 1, Ch. 287, L. 1947; amd. Sec. 38, Ch. 348, L. 1974; Sec. 1-710, R.C.M. 1947; Ap. p. Sec. 1, Ch. 433, L. 1971; amd. Sec. 42, Ch. 348, L. 1974; Sec. 1-901, R.C.M. 1947; R.C.M. 1947, 1-102, 1-311, 1-322.1(2), (3), 1-706(a) thru (d), 1-710(2) thru (4), 1-901(2) thru (7); amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 6, Ch. 512, L. 1991; amd. Sec. 1, Ch. 279, L. 1993.

Cross-References

Exemption from motor carrier laws, 69-12-102.

67-1-102. Policy. It is hereby declared that the purpose of this title is to further the public interest and aeronautical progress by:

(1) providing for the protection and promotion of safety in aeronautics;

(2) cooperating in effecting a uniformity of the laws relating to the development and regulation of aeronautics in the several states;

(3) revising existing statutes relative to the development and regulation of aeronautics so as to grant to a state agency such powers and impose upon it such duties that the state may properly perform its functions relative to aeronautics and effectively exercise its jurisdiction over persons and property within such jurisdiction, may assist in the promotion of a statewide system of airports, may cooperate with and assist the political subdivisions of this state and others engaged in aeronautics, and may encourage and develop aeronautics;

(4) establishing uniform regulations, consistent with federal regulations and those of other states, in order that those engaged in aeronautics of every character may so engage with the least possible restriction, consistent with the safety and the rights of others; and

(5) providing for cooperation with the federal authorities in the development of a national system of civil aviation and for coordination of the aeronautical activities of those authorities and the authorities of this state by assisting in accomplishing the purposes of federal legislation and eliminating costly and unnecessary duplication of functions.

History: En. Sec. 3, Ch. 152, L. 1945; R.C.M. 1947, 1-103.

Cross-References

Public transportation issues — Department of Transportation to represent state, 60-21-101.

67-1-103. Board of aeronautics. (1) The board shall act in an advisory capacity to the department in matters pertaining to aeronautics.

(2) Regular meetings shall be held at the board's offices at Helena, but whenever the convenience of the public or of the parties may be promoted or delay or expense may be prevented, it may hold hearings or proceedings at any other place designated by it.

History: (1)En. Sec. 2, Ch. 171, L. 1967; amd. Sec. 27, Ch. 348, L. 1974; Sec. 1-323, R.C.M. 1947; (2)En. Sec. 6, Ch. 152, L. 1945; amd. Sec. 3, Ch. 348, L. 1974; Sec. 1-203, R.C.M. 1947; R.C.M. 1947, 1-203, 1-323(2).

Cross-References

Board of Aeronautics — qualification — allocation — quasi-judicial, 2-15-2506.

67-1-104. Governmental nature of aeronautical functions. The acquisition of lands for establishing airports or other air navigation facilities; the acquisition of airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation of airports and other air navigation facilities, whether by the state separately or jointly with a municipality; the assistance of this state in that acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation; and the exercise of any other powers granted to the department are public and governmental functions exercised for a public purpose and as a matter of public necessity; and such lands and other property and privileges acquired and used by the state in the manner and for the purposes enumerated in this title are acquired and used for public and governmental purposes and as a matter of public necessity.

History: En. Sec. 21, Ch. 152, L. 1945; amd. Sec. 37, Ch. 348, L. 1974; amd. Sec. 2, Ch. 232, L. 1977; amd. Sec. 1, Ch. 234, L. 1977; R.C.M. 1947, 1-502.

67-1-105. Penalties. Unless otherwise provided, any person violating any of the provisions of chapters 1 through 3, except 67-3-212, or any of the rules or orders issued pursuant thereto is guilty of a misdemeanor and punishable by a fine of not more than $500 or by imprisonment in a county jail for not more than 90 days, or both.

History: En. Sec. 22, Ch. 152, L. 1945; R.C.M. 1947, 1-503; amd. Sec. 1, Ch. 140, L. 1979.

Part 2

Uniform Principles

67-1-201. Short title. This part may be cited as the "Uniform State Law for Aeronautics".

History: En. Sec. 10, Ch. 17, L. 1929; re-en. Sec. 2736.10, R.C.M. 1935; R.C.M. 1947, 1-606.

67-1-202. State sovereignty in space. Sovereignty in the space above the lands and waters of this state is declared to rest in the state, except where assumed by the United States law.

History: En. Sec. 5, Ch. 17, L. 1929; re-en. Sec. 2736.5, R.C.M. 1935; R.C.M. 1947, 1-601.

67-1-203. Spatial ownership. The ownership of the space above the lands and waters of this state is declared to be vested in the several owners of the surface beneath, subject to the right of flight described in 67-1-204.

History: En. Sec. 6, Ch. 17, L. 1929; re-en. Sec. 2736.6, R.C.M. 1935; R.C.M. 1947, 1-602.

Cross-References

Surface owner's rights, 70-16-101.

67-1-204. Lawfulness of flight and landings. (1) Flight in aircraft over the lands and waters of this state is lawful, unless it is at such a low altitude as to interfere with the then-existing use to which the land or water or the space over the land or water is put by the owner or unless conducted as to be imminently dangerous to persons or property lawfully on the land or water or in violation of the air commerce regulations that have been or may be promulgated by the department of transportation of the United States.

(2) Aircraft landings and takeoffs from the public waters of this state are lawful if proper safety precautions regarding public waters, as prescribed in 14 CFR, part 91, are taken prior to the landing or takeoff, except as otherwise provided by this section.

(3) Aircraft landings and takeoffs from public roads in this state are lawful if proper safety precautions, as approved by the governing jurisdiction of the roads, are taken prior to the landing or takeoff, except as otherwise provided in this section. However, the local governing jurisdiction may not incur liability as a result of an approval under this subsection.

(4) A person may not operate an aircraft, as pilot of the aircraft, either in the air, on the water, or on the ground, in a careless or reckless manner so as to endanger the life or property of others, including the aircraft being operated and passengers carried in the aircraft.

(5) The willful and malicious use of aircraft in stunting or diving over livestock in a manner calculated to frighten or stampede them is an unlawful use of aircraft, and actual and punitive damages, in addition to the penalties provided by this part, may be recovered in an action for damages caused by the willful and malicious use of the aircraft. As used in this subsection, "livestock" includes ostriches, rheas, and emus.

(6) The landing of an aircraft on the private lands or waters of another without consent is unlawful, except in the case of a forced landing. For damages caused by a forced landing, however, the owner or lessee of the aircraft or the pilot is liable for actual damage caused by the forced landing.

(7) A person may not knowingly operate, attempt to operate, or be in actual physical control of an aircraft while under the influence of alcohol or drugs. "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate the aircraft has been diminished to the slightest degree.

(8) A person having information regarding a violation of subsection (7) shall report the information to the department.

History: En. Sec. 7, Ch. 17, L. 1929; re-en. Sec. 2736.7, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1939; amd. Sec. 1, Ch. 16, L. 1949; amd. Sec. 1, Ch. 102, L. 1963; R.C.M. 1947, 1-603; amd. Sec. 1, Ch. 528, L. 1985; amd. Sec. 1, Ch. 542, L. 1987; amd. Sec. 7, Ch. 206, L. 1995.

Cross-References

Forfeiture of aircraft used in drug violations, 44-12-102

Unauthorized use of airplane, 45-6-308.

Tampering with aircraft unlawful, 45-8-113.

Operation of aircraft by intoxicated persons, 53-24-106.

Harrassment of livestock unlawful, 81-7-506.

Harrassment of wildlife unlawful, 87-3-126.

Restrictions on use of aircraft or boats, 87-3-126.

67-1-205. Penalties. A person who violates any provision of this part, except 67-1-204(8), shall be guilty of a misdemeanor and punishable by a fine of not more than $500 or by imprisonment for not more than 6 months, or both.

History: En. Sec. 8, Ch. 17, L. 1929; re-en. Sec. 2736.8, R.C.M. 1935; R.C.M. 1947, 1-604; amd. Sec. 2, Ch. 542, L. 1987.

67-1-206. Interpretation. This part shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it and to harmonize, as far as possible, with federal laws and regulations on the subject of aeronautics.

History: En. Sec. 9, Ch. 17, L. 1929; re-en. Sec. 2736.9, R.C.M. 1935; R.C.M. 1947, 1-605.

67-1-207 through 67-1-210 reserved.

67-1-211. Alcohol concentration standards — evidence admissible — administration of tests. (1) If a person acting or attempting to act as a crewmember of an aircraft has an alcohol concentration of 0.04% by weight or more as defined in 61-8-407, it may be inferred that the person is under the influence of alcohol and is in violation of 67-1-204.

(2) Evidence of any measured amount or detected presence of alcohol in the person at the time of the act alleged under subsection (1) and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(3) In any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204, the court or jury may consider federal regulations governing aeronautics.

(4) A person who operates an aircraft over the lands and waters of this state is considered to have given consent to a test of his blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol in his body if arrested by a peace officer for operating, attempting to operate, or being in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The test must be administered at the direction of a peace officer who has reasonable grounds to believe the person was operating, attempting to operate, or in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which of the aforesaid tests must be administered. A person who is unconscious or who is otherwise in a condition rendering him incapable of refusal is considered not to have withdrawn the consent provided by this subsection.

(5) If a person charged with violation of 67-1-204 refuses to submit to a test of his blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol in his body, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(6) The provisions relating to administration of tests provided in 61-8-405 and the definition of alcohol concentration provided in 61-8-407 apply to any testing done to determine any measured amount or detected presence of alcohol in a person and the alcohol concentration of a person charged with violation of 67-1-204.

History: En. Sec. 3, Ch. 542, L. 1987; amd. Sec. 15, Ch. 789, L. 1991.

Part 3
Finance

67-1-301. *(Temporary)* **Money — receipt and disbursement.** (1) All costs and expenses of administering this title, including the salaries of employees of the department engaged in functions pertaining to aeronautics, the expenses of members of the board, and all other disbursements necessary to carry out the purposes of this title, must be paid out of the following revenue:

(a) all gifts and all legislative appropriations to the department for aeronautics;

(b) all money received from any branch or department of the federal government or from other sources for the purposes mentioned in this title or for the furtherance of aeronautics generally in this state.

(2) All money collected under subsection (1) must be deposited in the state treasury to the credit of the department.

(3) When the airport loan program is terminated, any balance of the bond proceeds that is not loaned must remain in the state special revenue fund to be invested, and the income must be used to retire the outstanding debt on the remaining bond proceeds.

(4) (a) The following amounts must be deposited from the proceeds of the 4-cent-a-gallon tax imposed on aviation fuel by 15-70-204(1):

(i) in the state special revenue fund to the credit of the department, an amount equal to the proceeds of 2 cents a gallon collected under 15-70-204(1) for the sole purpose of carrying out its functions pertaining to aeronautics;

(ii) in the aeronautical loan account created in 67-1-305 to the credit of the department, an amount equal to the proceeds of 1 cent a gallon for loans to local governments and state agencies; and

(iii) in a separate account in the state special revenue fund to the credit of the department:

(A) an amount equal to the proceeds of 1 cent a gallon to provide grants to municipalities for airport development or improvement programs and to provide navigational aids, safety improvements, weather reporting services, and other aeronautical services for airports and landing fields and for the state's airways; and

(B) 25% of the amount collected from scheduled passenger air carriers certified under 14 CFR, part 121 or 135.

(b) Money deposited in the account created in 67-1-305 may, with the approval of the board, be used only to provide loans to local governments and state agencies for aeronautical purposes, including airport improvement. The board shall establish procedures, including the interest rate charged, for providing loans. Proceeds of all repayments of loans, including interest, made under this subsection (4)(b) must be deposited in the account created in 67-1-305.

(c) Money deposited in the separate account established in subsection (4)(a)(iii) may, with the approval of the board, be used only to provide grants to municipalities for airport development or improvement programs and to provide navigational aids, safety improvements, weather reporting services, and other aeronautical services for airports and landing fields and for the state's airways. The board shall establish procedures for the awarding of grants.

(5) Except as provided in 15-70-221, the gasoline license tax imposed by the laws of this state on aviation fuel purchased and used for the operation of airplanes or aircraft may not be refunded.

(6) Of the amount of aviation fuel tax collected from the scheduled passenger air carriers certified under 14 CFR, part 121 or 135, 25% must be deposited in the separate account provided for in 67-1-305 to be used only for pavement preservation on airports served by these air carriers. *(Terminates on occurrence of contingency—sec. 17, Ch. 642, L. 1993.)*

67-1-301. *(Effective on occurrence of contingency)* **Money — receipt and disbursement.** (1) All costs and expenses of administering this title, including the salaries of employees of the department engaged in functions pertaining to aeronautics, the expenses of members of the board, and all other disbursements necessary to carry out the purposes of this title, must be paid out of the following revenue:

(a) all gifts and all legislative appropriations to the department for aeronautics;

(b) all money received from any branch or department of the federal government or from other sources for the purposes mentioned in this title or for the furtherance of aeronautics generally in this state.

(2) All money collected under subsection (1) must be deposited in the state treasury to the credit of the department.

(3) When the airport loan program is terminated, any balance of the bond proceeds that is not loaned must remain in the state special revenue fund to be invested, and the income must be used to retire the outstanding debt on the remaining bond proceeds.

(4) (a) The following amounts must be deposited from the proceeds of the 2-cent-per-gallon tax imposed on aviation fuel by 15-70-204(1):

(i) in the state special revenue fund to the credit of the department, an amount equal to the proceeds of 1 cent a gallon collected under 15-70-204(1) for the sole purpose of carrying out its functions pertaining to aeronautics; and

(ii) in a separate account in the state special revenue fund to the credit of the department, an amount equal to the proceeds of 1 cent a gallon for grants to municipalities and for other aeronautical purposes as provided in subsection (4)(b).

(b) Money deposited in the separate account established in subsection (4)(a)(ii) may, with the approval of the board, be used only to provide grants to municipalities for airport development or improvement programs and to provide navigational aids, safety improvements, weather reporting services, and other aeronautical services for airports and landing fields and for the state's airways. The board shall establish procedures for the awarding of grants.

(5) Except as provided in 15-70-221, the gasoline license tax imposed by the laws of this state on aviation fuel purchased and used for the operation of airplanes or aircraft may not be refunded.

History: En. Sec. 20, Ch. 152, L. 1945; amd. Sec. 1, Ch. 120, L. 1949; amd. Sec. 220, Ch. 147, L. 1963; amd. Sec. 36, Ch. 348, L. 1974; amd. Sec. 3, Ch. 213, L. 1975; R.C.M. 1947, 1-501; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 654, L. 1983; amd. Sec. 2, Ch. 676,

L. 1985; amd. Sec. 1, Ch. 41, L. 1987; amd. Secs. 10, 12, Ch. 642, L. 1993; amd. Sec. 4, Ch. 585, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 585 in (4)(a) increased tax from 3 cents a gallon to 4 cents a gallon; in (4)(a)(i) increased per gallon tax from 1 cent to 2 cents; inserted (4)(a)(iii)(B) requiring deposit in special revenue fund of 25% of amount collected from scheduled passenger air carriers certified under 14 CFR, part 121 or 135; inserted (6) requiring deposit of 25% of aviation fuel tax collected from passenger air carriers into separate account for pavement preservation at airports served by carriers; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Termination: Section 17, Ch. 642, L. 1993, provided that this section is effective July 1, 1993, and terminates on the first day of the month 60 days after the balance in the aeronautical loan account, after deposits and less refunds, reaches $1 million.

Cross-References

Gasoline license tax — rate, 15-70-204.

Refund or credit authorized, 15-70-221.

State fund structure, 17-2-102.

Distribution and use of proceeds of gasoline dealers' license tax, 60-3-201.

Airline property tax — state airports, 67-1-303.

67-1-302. Industrial revenue projects. The board of aeronautics may exercise the power and authority of a municipality under Title 90, chapter 5, part 1, with respect to projects suitable for use by commercial enterprises providing scheduled air transportation services primarily within the state if such projects are located within or based and used primarily within the state. For purposes of this section, the board of aeronautics shall be considered a municipality and a governing body thereof under Title 90, chapter 5, part 1, and shall give notice of the public hearing required by 90-5-104 in three newspapers published and circulating generally in the state and shall not issue any bonds unless it appears, after the public hearing, that the acquisition or improvements of the project is in the public interest of the state. For purposes of this section, projects suitable for commercial enterprises providing scheduled air transportation services shall include but are not limited to aircraft parts, aircraft, hangars, storage and aircraft maintenance facilities, fuel facilities, and other personal or real property suitable for use by a scheduled air transportation enterprise.

History: En. Sec. 8, Ch. 656, L. 1979.

67-1-303. Airline property tax — state airports. (1) Within 30 days of receipt, the county treasurer shall transmit to the state treasury 90% of the property tax collected on property of airline companies by reason of a state airport being located in the county.

(2) The state treasurer shall place the money in the state special revenue fund to the credit of the department of transportation for the purposes provided for in 67-1-301(4)(a)(i).

History: En. Sec. 2, Ch. 238, L. 1981; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 6, Ch. 512, L. 1991; amd. Sec. 15, Ch. 642, L. 1993.

Cross-References

Statement of assessed value of airline property transmitted to counties, 15-23-106.

67-1-304. Airport grants and loans. Any airport grant or loan that the department may be authorized to issue may be issued only after review and approval of the grant or loan request by the board.

History: En. Sec. 4, Ch. 685, L. 1983.

Cross-References

Function of Board of Aeronautics, 67-1-103.

67-1-305. *(Temporary)* **Special aeronautical loan account.** There is a special aeronautical loan account in the state special revenue fund. Money deposited in the account may be used only for providing loans specified in 67-1-301(4)(b). *(Terminates on occurrence of contingency—sec, 17, Ch. 642, L. 1993.)*

History: En. Sec. 11, Ch. 642, L. 1993.

Compiler's Comments

Effective Date — Termination: Section 17, Ch. 642, L. 1993, provided that this section is effective July 1, 1993, and terminates on the first day of the month 60 days after the balance in the aeronautical loan account, after deposits and less refunds, reaches $1 million.

67-1-306. *(Effective on occurrence of contingency)* **Special aeronautical loan account.** There is a special aeronautical loan account in the state special revenue fund. Principal and interest payments deposited in the account may be used only for providing loans specified in 67-1-307.

History: En. Sec. 13, Ch. 642, L. 1993.

Compiler's Comments

Effective Date: Section 17, Ch. 642, L. 1993, provided that this section is effective on the first day of the month 60 days after the balance in the aeronautical loan account, after deposits and less refunds, reaches $1 million.

67-1-307. *(Effective on occurrence of contingency)* **Aeronautical loans.** Money deposited in the account created in 67-1-306 may, with the approval of the board, be used only to provide loans to local governments and state agencies for aeronautical purposes, including airport improvement. The board shall establish procedures, including the interest rate charged, for providing loans. Proceeds of all repayments of loans, including interest, made under this section must be deposited in the account created in 67-1-306.

History: En. Sec. 14, Ch. 642, L. 1993.

Compiler's Comments

Effective Date: Section 17, Ch. 642, L. 1993, provided that this section is effective on the first day of the month 60 days after the balance in the aeronautical loan account, after deposits and less refunds, reaches $1 million.

CHAPTER 2

DEPARTMENT OF TRANSPORTATION AERONAUTICAL POWERS AND DUTIES

Part 1 — General Powers

67-2-101. Aeronautical powers and duties of department.
67-2-102. Rules, orders, and standards.
67-2-103 and 67-2-104 reserved.
67-2-105. Air search and rescue volunteers — expenses — workers' compensation coverage.

Part 2 — State Aircraft
(Repealed. Sec. 4, Ch. 23, L. 1981; Sec. 22, Ch. 274, L. 1981)

Part 3 — State Airports

67-2-301. State airports — acquisition.
67-2-302. State airports — operation.

Part 4 — Intergovernmental Cooperation

67-2-401. Cooperation — federal government.
67-2-402. Cooperation — municipalities.
67-2-403. Federal aid.

Part 5 — Enforcement

67-2-501. Enforcement.
67-2-502. Investigations and hearings.
67-2-503. Use of reports.

Part 1
General Powers

67-2-101. Aeronautical powers and duties of department. (1) The department shall supervise aeronautics within this state. It shall encourage, foster, and assist in the development of aeronautics and encourage the establishment of airports and other air navigation facilities.

(2) The department shall cooperate with and assist the federal government, the political subdivisions of this state, and others engaged in aeronautics or the promotion of aeronautics and shall coordinate the aeronautical activities of these bodies.

(3) The department may designate, design, and establish, expand, or modify a state airways system which will best serve the interests of the state. It may chart that airways system and arrange for publication and distribution of maps, charts, notices, and bulletins relating to the airways which may be required in the public interest. The system shall be supplementary to and coordinated in design and operation with the federal airways system. It may include all types of air navigation facilities, but the facilities must conform to federal safety standards.

(4) The department may draft and recommend necessary legislation to advance the interests of the state in aeronautics and represent the state in aeronautical matters before federal agencies and other state agencies.

(5) The department may participate as party plaintiff or defendant or as intervenor on behalf of the state or a municipality or citizen in a controversy involving any claimed encroachment by the federal government or any foreign state upon state or individual rights pertaining to aeronautics.

(6) The department may use the facilities and services of other agencies of the state when reasonably available.

(7) The department may enter into any contracts necessary to the execution of the powers granted the department by this title.

(8) The department shall grant no exclusive right for the use of an airway, airport, restricted landing area, or other air navigation facility under its jurisdiction. This subsection does not prevent the making of leases in accordance with other provisions of this title.

History: En. Sec. 7, Ch. 152, L. 1945; amd. Sec. 4, Ch. 348, L. 1974; R.C.M. 1947, 1-204.

Cross-References

Department of Livestock — authority to inspect airports and aircraft, 81-2-505.

Garbage originating on or removed from airplanes not to be treated or fed to swine or other animals, 81-2-510.

67-2-102. Rules, orders, and standards. (1) The department may perform acts; issue and amend orders; adopt reasonable, general, or special rules; and establish minimum standards, consistent with this title, as it considers necessary to:

(a) carry out this title;

(b) perform its duties for the purpose of protecting and ensuring the general public interest and safety, the safety of persons receiving instruction concerning (or operating, using, or traveling in) aircraft, and of persons and property on land or water; and

(c) develop and promote aeronautics in this state.

(2) All rules prescribed by the department under this title shall be kept in conformity, as nearly as may be, with the then-current federal legislation governing aeronautics and the rules and standards adopted or issued under federal legislation.

History: En. 1-204.2 by Sec. 6, Ch. 348, L. 1974; R.C.M. 1947, 1-204.2.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

67-2-103 and 67-2-104 reserved.

67-2-105. Air search and rescue volunteers — expenses — workers' compensation coverage. (1) The department may temporarily employ an aircrew member or other person who volunteers to aid in the aerial search for a missing aircraft being conducted by the department.

(2) The department and volunteer stand in the relationship of employer and employee for purposes of and as those terms are defined in Title 39, chapter 71. The department must have each volunteer covered by the Workers' Compensation Act in Title 39, chapter 71, during the course of the volunteer's assistance.

(3) Volunteers are not salaried employees and are not entitled to wages and benefits. The department may in its discretion reimburse volunteers for their otherwise uncompensated out-of-pocket expenses, including but not limited to their expenditures for fuel, oil, food, and lodging.

History: En. Sec. 1, Ch. 336, L. 1985; amd. Sec. 8, Ch. 279, L. 1993.

Cross-References

Air rescue volunteer as employee for workers' compensation coverage, 39-71-118, 39-71-401.

Part 2

State Aircraft (Repealed. Sec. 4, Ch. 23, L. 1981; Sec. 22, Ch. 274, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

67-2-201. En. 1-1101 by Sec. 1, Ch. 378, L. 1974; amd. Sec. 4, Ch. 213, L. 1975; amd. Sec. 9, Ch. 232, L. 1977; R.C.M. 1947, 1-1101.

67-2-202. En. 1-1102 by Sec. 2, Ch. 378, L. 1974; amd. Sec. 5, Ch. 213, L. 1975; R.C.M. 1947, 1-1102.

67-2-203. En. 1-1103 by Sec. 3, Ch. 378, L. 1974; amd. Sec. 6, Ch. 213, L. 1975; R.C.M. 1947, 1-1103.

67-2-204. En. 1-1104 by Sec. 4, Ch. 378, L. 1974; R.C.M. 1947, 1-1104.

67-2-205. En. 1-1105 by Sec. 5, Ch. 378, L. 1974; R.C.M. 1947, 1-1105(part).

Part 3

State Airports

67-2-301. State airports — acquisition. (1) The department may, on behalf of and in the name of this state:

(a) acquire real or personal property by purchase, gift, devise, lease, condemnation proceedings, or otherwise for the purpose of establishing and constructing airports, restricted landing areas, and other air navigation facilities;

(b) acquire in like manner, own, control, establish, construct, enlarge, improve, maintain, equip, operate, regulate, and police airports, restricted landing areas, and other air navigation facilities either within or outside this state;

(c) prior to acquisition, make investigations, surveys, and plans;

(d) erect, install, construct, and maintain facilities at those airports for the servicing of aircraft and for the comfort and accommodation of air travelers; and

(e) dispose of any property, airport, restricted landing area, or any other air navigation facility by sale, lease, or otherwise in accordance with the laws of this state governing the disposition of other like property of the state.

(2) The department may not, however, acquire or take over an airport, restricted landing area, or other air navigation facility owned or controlled by a municipality of this state without the consent of the municipality. The department may erect, equip, operate, and maintain on an airport, buildings and equipment necessary and proper to establish, maintain, and conduct the airport and air navigation facilities connected with it.

(3) Where necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports and restricted landing areas acquired or operated under the provisions of this title, the department may acquire, in the manner provided for the acquisition of property for airport purposes, easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of the airports or restricted landing areas, and such other airport protection privileges as are necessary to ensure safe approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation of them. The department may also acquire in the same manner the right or easement, for a term of years or perpetually, to place or maintain suitable marks for the daytime marking and suitable lights for the nighttime marking of airport hazards, including the right of ingress and egress to or from the airport hazards for the purpose of maintaining and repairing the lights and marks. This authority does not limit the right, power, or authority of the state or a municipality to zone property adjacent to an airport or restricted landing area pursuant to a law of this state.

(4) The department may engage in all those activities jointly with the United States, other states, and with municipalities or other agencies of this state.

(5) For the purpose of acquiring any property which it is authorized to acquire, the department may exercise the right of eminent domain, in the name of the state, in the manner provided by the laws of this state for the acquisition

of real property for public purposes. The acquisition of property for any of those purposes is a public use.

History: En. Sec. 19, Ch. 152, L. 1945; amd. Sec. 35, Ch. 348, L. 1974; amd. Sec. 1, Ch. 232, L. 1977; R.C.M. 1947, 1-401(1) thru (5).

Cross-References

Airport police officers — employment and education standards, 7-32-303.

Passenger terminals — fire protection and safety regulations, Title 50, ch. 61, part 1.

Acquisition of property rights when zoning not sufficient, 67-6-301.

Acquisition of airports by counties, cities, and towns, 67-10-102.

Airport easement acquisition, 67-10-201.

Joint airport board, 67-10-205.

Airport property — acquisition by eminent domain, 67-10-221.

Purchase of easements, 67-11-201.

67-2-302. State airports — operation. (1) The department may:

(a) lease, for a term not exceeding 10 years, airports or other air navigation facilities or real property acquired or set apart for airport purposes to private parties, a municipal or state government or the national government, or a department of either of them, for operation;

(b) lease or assign, for a term not exceeding 10 years, space, area, improvements, or equipment on those airports to private parties, a municipal or state government or the national government, or a department of either for operation or use consistent with the purposes of this title;

(c) sell any part of those airports, other air navigation facilities, or real property to a municipal or state government or to the United States or a department or instrumentality thereof for aeronautical purposes or purposes incidental thereto; and

(d) confer the privilege of concessions for supplying goods, commodities, things, services, and facilities upon the premises of those airports. However, in so doing the public may not be deprived of its rightful, equal, and uniform use thereof.

(2) It may determine the charges or rental for the use of state airports, the charges for service or accommodations under its control, and the terms and conditions under which the properties may be used. However, the public may not be deprived of its rightful, equal, and uniform use of the property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expenses of operation to the state.

(3) The state has, and the department may enforce, agisters' liens as provided by law for repair, improvement, storage, or care of any personal property.

(4) The department may employ persons or contract with persons or firms to provide law enforcement in and around state airports whenever required by federal aviation regulations.

History: En. Sec. 19, Ch. 152, L. 1945; amd. Sec. 35, Ch. 348, L. 1974; amd. Sec. 1, Ch. 232, L. 1977; R.C.M. 1947, 1-401(6), (7); amd. Sec. 1, Ch. 192, L. 1981.

Cross-References

Airport all-beverages license, 16-4-208.

Airport all-beverages license fee, 16-4-501.

Joint airport board, 67-10-205.

Part 4

Intergovernmental Cooperation

67-2-401. Cooperation — federal government. (1) The department may confer with or hold joint hearings with any federal aeronautical agency in connection with any matter arising under this title or relating to the sound development of aeronautics and may avail itself of the cooperation, services, records, and facilities of federal agencies, as fully as practicable, in the administration and enforcement of this title. It shall reciprocate by furnishing to the federal agencies its cooperation, services, records, and facilities to the extent practicable.

(2) It shall report to the appropriate federal agency all accidents in aeronautics in this state of which it is informed and preserve, protect, and prevent the removal of the component parts of any aircraft involved in an accident being investigated by it until a federal agency begins an investigation. It shall report to the appropriate federal agency all refusals by it to register federal licenses, certificates, or permits; all revocations of certificates of registration; the reasons for its action; and all penalties of which it has knowledge imposed upon aircrews for violations of the laws of this state relating to aeronautics or for violations of the rules or orders of the department.

History: En. 1-204.1 by Sec. 5, Ch. 348, L. 1974; R.C.M. 1947, 1-204.1; amd. Sec. 8, Ch. 279, L. 1993.

67-2-402. Cooperation — municipalities. (1) The department may offer its engineering or other technical services, without charge, to a municipality desiring them in connection with the construction, maintenance, or operation or proposed construction, maintenance, or operation of an airport or restricted landing area.

(2) The department may render assistance in the acquisition, development, operation, or maintenance of airports owned, controlled, or operated by municipalities in this state out of appropriations made by the legislature for that purpose.

(3) Municipalities may cooperate with the department in the development of aeronautics and aeronautic facilities in this state.

History: En. 1-204.3 by Sec. 7, Ch. 348, L. 1974; R.C.M. 1947, 1-204.3.

67-2-403. Federal aid. (1) The department may cooperate with the government of the United States and any agency or department thereof in the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities in this state and may comply with the laws of the United States and any regulations made under those laws for the expenditure of federal moneys upon airports and other navigation facilities.

(2) The department may accept, receive, and receipt for federal moneys and other moneys, either public or private, for and in behalf of this state or a municipality of this state, for the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities, whether the work is to be done by the state or by the municipalities or jointly, aided by grants of aid from the United States upon terms and conditions prescribed by the laws of the United States and any rules made under them. The department may act as agent of a municipality of this state upon the

request of the municipality in accepting, receiving, and receipting for moneys in its behalf for airports or other air navigation facility purposes and in contracting for the acquisition, construction, improvement, maintenance, or operation of airports or other air navigation facilities financed either in whole or in part by federal moneys. The governing body of a municipality may designate the department as its agent for those purposes and enter into an agreement with it prescribing the terms and conditions of the agency in accordance with federal laws and rules. Moneys paid by the United States government shall be retained by the state or paid to the municipalities under terms and conditions imposed by the United States government in making the grants.

(3) All contracts for the acquisition, construction, improvement, maintenance, and operation of airports or other air navigation facilities made by the department, either as the agent of this state or as the agent of a municipality, shall be made under the laws of this state governing the making of like contracts by the state or by municipalities. However, where the acquisition, construction, improvement, maintenance, and operation of an airport, landing strip, or other air navigation facility is financed wholly or partially with federal moneys, the department, as agent of the state or of a municipality of the state, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States and any rules made under them.

(4) All moneys accepted for disbursement by the department under subsection (2) of this section shall be deposited in the state treasury and, unless otherwise prescribed by the authority from which the money is received, kept in separate funds, designated according to the purposes for which the moneys were made available, and held by the state in trust for those purposes. All those moneys are appropriated for the purposes for which they were made available, to be spent in accordance with federal laws and regulations and with this title. The department may, whether acting for this state or as the agent of any of its municipalities or when requested by the United States government or an agency or department of the United States, disburse the moneys for the designated purposes, but this does not preclude any other authorized method of disbursement.

History: **En. Sec. 8, Ch. 152, L. 1945; amd. Sec. 9, Ch. 348, L. 1974; R.C.M. 1947, 1-205.**

Cross-References

Federal revenue and endowments, Title 17, ch. 3.

Federal and state money, 67-10-405.

Part 5
Enforcement

67-2-501. Enforcement. The department and every state, county, and municipal officer charged with the enforcement of state or municipal laws shall enforce and assist in the enforcement of this title and of all rules adopted under it and of all other laws of this state relating to aeronautics. In the aid of that enforcement, the department possesses general police powers. The department may also, in the name of the state, enforce this title and the rules adopted under it by injunction in the courts of this state.

History: **En. 1-204.4 by Sec. 8, Ch. 348, L. 1974; R.C.M. 1947, 1-204.4(1).**

Cross-References

Injunctions, Title 27, ch. 19.

67-2-502. Investigations and hearings. The department may hold investigations, inquiries, and hearings concerning matters covered by this title, by its orders and rules, and concerning accidents in aeronautics within this state. An officer or employee of the department designated to hold an investigation or hearing may administer oaths and affirmations; certify official acts; issue subpoenas; and compel the attendance and testimony of witnesses and the production of papers, books, and documents. In case of failure to comply with a subpoena or order issued under this title, the department may invoke the aid of a state court of general jurisdiction. The court may then order the witness to comply with the requirements of the subpoena or order or to give evidence pertaining to the matter in question. A failure to obey the order of the court may be punished as a contempt.

History: **En. 1-204.4 by Sec. 8, Ch. 348, L. 1974; R.C.M. 1947, 1-204.4(2).**

Cross-References

Contested cases, Title 2, ch. 4, part 6.

67-2-503. Use of reports. The reports of investigations or hearings may not be admitted in evidence or used for any purpose in any suit, action, or proceedings growing out of a matter referred to in the investigation, hearing, or report, except in case of criminal or other proceedings instituted in behalf of the department or this state under this title and other laws of this state relating to aeronautics. An officer or employee of the department may not be required to testify to any facts ascertained in or information gained by reason of his official capacity or be required to testify as an expert witness in a suit, action, or proceeding involving an aircraft. The department may, in its discretion, make available to appropriate federal and state agencies information and material developed in the course of its hearings and investigations.

History: **En. 1-204.4 by Sec. 8, Ch. 348, L. 1974; R.C.M. 1947, 1-204.4(3).**

CHAPTER 3

REGULATION AND LICENSING

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67-3-101. Regulation and licensing — general provisions.
67-3-102. Exceptions.
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67-3-205. Aircraft registration account — source of funds — allocation.
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67-3-207 through 67-3-210 reserved.
67-3-211. Aircrew licensing.
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67-3-213 through 67-3-220 reserved.
67-3-221. Repealed.

Part 3 — Airport Licensing
(Repealed. Sec. 1, Ch. 398, L. 1985)

Part 4 — Air Operators and Air Carriers

67-3-401. Commercial air operators — insurance.
67-3-402. Amount of insurance.
67-3-403. Evidence of insurance.
67-3-404. Continuation of insurance — notice upon cancellation.
67-3-405. Violations.
67-3-406 through 67-3-420 reserved.
67-3-421 through 67-3-429. Repealed.

Chapter Cross-References

Discrimination in license issuance prohibited, 49-3-204.

Part 1
General Provisions

67-3-101. Regulation and licensing — general provisions. In order to promote the general public interest and safety and to carry out the purposes of this title, the department may:

(1) require the annual registration of federal licenses, permits, or certificates of civil aircraft engaged in air navigation within this state, of aircrews engaged in aeronautics within this state, and of aeronautics instructors giving instruction in flying subjects and may issue certificates of registration. The certificates of registration constitute licenses of the aircraft, aircrews, and instructors for operations within this state to the extent permitted by the federal licenses, certificates, or permits so registered. The department may charge a fee for the registration of each federal license, certificate, or permit not exceeding $10. It may accept as evidence of the holding of a federal license, certificate, or permit the verified application of the owner of the aircraft, a member of the aircrew, or the instructor. The application shall contain information which the department may by rule or order prescribe.

(2) register aircraft repair shops, aircraft, aircraft parts and sales dealers, and other persons operating in aviation and license aircraft repair shops, aircraft, aircraft parts and sales dealers, and other persons operating in aviation, air schools, and aeronautics instructors giving instruction in ground subjects, in accordance with rules to be adopted by the department, and may annually renew these licenses. It may charge for the original licensing of aircraft repair shops, aircraft, aircraft parts and sales dealers, and other persons operating in aviation, air schools, and aeronautics instructors not more than $10 and for the renewal of a license not more than $10.

(3) upon notification by the federal aviation administration that it has revoked the license or certificate of an aircraft, aircrew member, air school, or aeronautics instructor, temporarily or permanently revoke the license or

certificate of registration issued for that aircraft, aircrew member, air school, or aeronautics instructor, giving reasons for the action.

History: En. Sec. 9, Ch. 152, L. 1945; amd. Sec. 10, Ch. 348, L. 1974; R.C.M. 1947, 1-301(1); amd. Sec. 2, Ch. 398, L. 1985; amd. Sec. 1, Ch. 508, L. 1985; amd. Sec. 125, Ch. 370, L. 1987; amd. Sec. 8, Ch. 279, L. 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Secured transactions — perfection in multiple state transactions, 30-9-103.

Aircraft sales personnel overtime compensation exclusions, 39-3-406.

Forfeiture of aircraft used in drug violations, 44-12-102.

Unauthorized use of airplane, 45-6-308.

Tampering with aircraft unlawful, 45-8-113.

Nondiscrimination in licensing, 49-3-204.

Transportation of property by motor carrier in continuous movement with air carrier — exemption from motor carrier laws, 69-12-102.

Airplane garbage disposal methods in relation to livestock, 81-2-510.

Harrassment of livestock unlawful, 81-7-506.

Harrassment of wildlife unlawful, 87-3-126.

67-3-102. Exceptions. The provisions of subsections (2) and (3) of 67-3-101 do not apply to:

(1) an aircraft which has been licensed by a foreign country with which the United States has a reciprocal agreement covering the operations of that licensed aircraft;

(2) an aircraft which is owned by a nonresident of this state who is lawfully entitled to operate the aircraft in the state of his residence;

(3) an aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce;

(4) an aircrew operating military or public aircraft or an aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operation of that licensed aircraft;

(5) a person operating model aircraft or a person piloting an aircraft which is equipped with fully functioning dual controls when a licensed instructor is in full charge of one set of the controls and the flight is solely for instruction or for the demonstration of the aircraft to a prospective purchaser;

(6) a nonresident operating aircraft in this state who is lawfully entitled to operate aircraft in the state of residence;

(7) an aircrew while operating or taking part in the operation of an aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce.

History: En. Sec. 9, Ch. 152, L. 1945; amd. Sec. 10, Ch. 348, L. 1974; R.C.M. 1947, 1-301(3); amd. Sec. 8, Ch. 279, L. 1993.

67-3-103. Licenses and certificates — exhibition. (1) The federal license, certificate, or permit and the evidence of registration in this or another state, if any, required for an aircrew member shall be kept in the personal possession of the aircrew member when operating within this state and must be presented for inspection upon the demand of a passenger, a peace officer of this state, an authorized official or employee of the department, or an official, manager, or person in charge of an airport in this state upon which the aircrew member lands or upon the reasonable request of any other person.

(2) The federal aircraft license, certificate, or permit and the evidence of registration in this or another state, if any, required for aircraft must be carried in every aircraft operating in this state at all times and must be conspicuously

posted in the aircraft where they may readily be seen by passengers or inspectors and must be presented for inspection upon demand of a passenger, a peace officer of this state, an authorized official or employee of the department, or an official, manager, or person in charge of an airport in this state upon which it lands or upon the reasonable request of any person.

History: **En. Sec. 10, Ch. 152, L. 1945; amd. Sec. 11, Ch. 348, L. 1974; R.C.M. 1947, 1-302; amd. Sec. 8, Ch. 279, L. 1993.**

67-3-104. Department orders. (1) The department shall set forth its reasons for its action and shall state the requirements to be met before approval will be given, registration permitted, license granted, or order modified or changed before it:

(a) refuses to permit the registration of a license, certificate, or permit;

(b) refuses to grant a license to an air school or to an aeronautics instructor in ground subjects; or

(c) issues an order requiring certain things to be done or revoking a license or certificate.

(2) An order made by the department under this title shall be served upon the interested persons by registered or certified mail or in person.

(3) (a) A person aggrieved by an order of the department or by the granting or denial of a license, certificate, or registration may, within 10 days after receiving notice of the department's order or action, appeal from the order or action to the district court of the county in which the person resides or the county in which any property affected by the order or action is located.

(b) The appellant shall file with the clerk of the district court to which the appeal is taken a notice of appeal which shall state the substance of the order or action appealed from, the date of the order or action, and that the person appeals to the court from it.

(c) The appellant shall serve a copy of the notice of appeal upon the department. The order of filing and service is immaterial.

(d) The appeal shall be heard not less than 10 days or more than 30 days after the filing of the notice of appeal unless the judge, for sufficient cause resulting from press of business or other reason, is unable to hear the appeal within that time. In that event, the hearing may be deferred until it can be heard by the court. The appeal may be heard without formal pleadings.

History: **En. Sec. 18, Ch. 152, L. 1945; amd. Sec. 17, Ch. 348, L. 1974; R.C.M. 1947, 1-310(part); amd. Sec. 3, Ch. 398, L. 1985.**

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.

67-3-105. Inspection powers. A person charged with the duty of enforcing this title may inspect and examine at reasonable hours any premises, buildings, or other structures where airports, restricted landing areas, air schools, flying clubs, or other air navigation facilities or aeronautical activities are operated or carried on.

History: **En. Sec. 18, Ch. 152, L. 1945; amd. Sec. 17, Ch. 348, L. 1974; R.C.M. 1947, 1-310(part).**

Part 2
Aircraft, Aircrews, and Instructors

67-3-201. Aircraft registration and licensing required. (1) Except as provided in 67-3-102 and in subsection (6) of this section, a person may not operate or cause or authorize to be operated a civil aircraft within this state unless the aircraft has an appropriate effective registration, license, certificate, or permit issued or approved by the United States government which has been registered with the department and the registration with the department is in force.

(2) Aircraft customarily kept in this state must be registered on or before March 1 of each year with the department, which must charge a fee therefor according to the fee schedule in 67-3-206. The registration must be renewed annually on or before March 1 each year.

(3) Section 67-3-202 and subsections (2) and (4) through (6) of this section do not apply to:

(a) aircraft owned and operated by the federal government, the state, or any political subdivision thereof;

(b) aircraft owned and held by an aircraft dealer solely for the purpose of resale;

(c) aircraft operated by an airline company and regularly scheduled for the primary purpose of carrying persons or property for hire in interstate or international transportation; or

(d) dismantled or otherwise nonflyable aircraft.

(4) An aircraft must be registered in a particular county of the state. This county must be the county of the owner's principal residence, if the owner is a natural person, or the owner's principal place of doing business in the state, if the owner is not a natural person. However, if the owner declares by affidavit that the aircraft is customarily kept at a landing facility in another county within the state, he may register the aircraft as property within such other county.

(5) Aircraft not registered in the state but entering the state to engage in commercial operations shall be registered prior to commencing operation.

(6) Owners of ultralight aircraft for which no appropriate effective license, certificate, or permit is issued by the United States government shall pay the fee required in 67-3-206 and file with the department an appropriate registration recognized and approved by the United States government.

History: (1)En. Sec. 9, Ch. 152, L. 1945; amd. Sec. 10, Ch. 348, L. 1974; Sec. 1-301, R.C.M. 1947; (2) thru (6)En. 1-325 by Sec. 1, Ch. 542, L. 1975; amd. Sec. 1, Ch. 213, L. 1975; amd. Sec. 1, Ch. 210, L. 1977; Sec. 1-325, R.C.M. 1947; R.C.M. 1947, 1-301(part), 1-325; amd. Sec. 3, Ch. 229, L. 1979; amd. Sec. 2, Ch. 220, L. 1981; amd. Sec. 1, Ch. 157, L. 1983; amd. Sec. 126, Ch. 370, L. 1987; amd. Sec. 9, Ch. 453, L. 1987.

Cross-References

Applicability — special property tax, 15-24-303, 15-24-304.

67-3-202. Penalty for registration violations. (1) When an aircraft required to be registered under the provisions of subsections (2) and (4) through (6) of 67-3-201 is not registered on or before March 1 of the current calendar year, a penalty of five times the annual registration fee provided in 67-3-206 must be added to the registration fee and collected. Registration of an aircraft in the name of the applicant for the year immediately preceding the year for which application for registration is made shall be prima facie evidence that the aircraft has been based in this state during the year for which application for registration is made.

(2) A person who owns or causes or authorizes an aircraft to be operated or who operates an aircraft required to be registered in the state without having displayed upon such aircraft a certificate of registration issued by the department for that aircraft commits a misdemeanor.

History: **En. 1-326 by Sec. 2, Ch. 542, L. 1975; amd. Sec. 1, Ch. 213, L. 1975; amd. Sec. 2, Ch. 210, L. 1977; R.C.M. 1947, 1-326; amd. Sec. 4, Ch. 229, L. 1979; amd. Sec. 3, Ch. 220, L. 1981; amd. Sec. 2, Ch. 157, L. 1983; amd. Sec. 127, Ch. 370, L. 1987; amd. Sec. 10, Ch. 453, L. 1987.**

Cross-References

Prorated fee in lieu of tax, 15-24-304.

Sentence when no penalty specified, 46-18-212.

67-3-203. Registration application — payment of fees — deposit of fees. (1) The owner of an aircraft subject to the fee in lieu of property tax must submit an application for registration or registration renewal to the department on or before March 1 of each year. The application must be accompanied by the fee in lieu of tax prescribed in 67-3-206.

(2) An aircraft subject to the fee in lieu of tax may not be registered until payment of the fee is made to the department.

(3) All fees paid to the department for registration must be deposited to the account established in 67-3-205.

History: **En. Sec. 1, Ch. 453, L. 1987.**

67-3-204. Fee in lieu of tax on registered aircraft — decal. (1) Except as provided in subsection (3), aircraft required to be registered in Montana are subject to a fee. The registration fee is in lieu of property tax.

(2) The department shall issue a decal to the owner of the aircraft required to be registered at the time of payment of the registration fee in lieu of tax, as provided in 67-3-201. No aircraft subject to a fee in lieu of tax may be operated in this state unless there is displayed on the aircraft a decal as visual proof that the fee in lieu of tax has been paid for the aircraft and that the aircraft is registered for the current year.

(3) Aircraft that meet the description of property described in 15-6-145 are exempt from the fee imposed by subsection (1). Aircraft subject to the fee in lieu of tax are exempt from all other taxation.

History: **En. Sec. 2, Ch. 453, L. 1987; amd. Sec. 14, Ch. 773, L. 1991.**

67-3-205. Aircraft registration account — source of funds — allocation. (1) There is an account in the state special revenue fund to which must be credited all money received from fees paid in lieu of tax on aircraft as required in this part and 15-24-304 and all penalties collected for registration violations as provided in 67-3-202.

(2) Money in the account is allocated as follows:

(a) 90% to the counties in the proportion that each county's collections bear to the total collections statewide; and

(b) 10% to the department for the purpose of administering and enforcing aircraft registration.

(3) The allocations required in subsection (2)(a) must be made twice annually by the department. The first allocation must be made between March 15 and March 30 and the second allocation must be made between July 1 and July 15.

(4) The allocation required in subsection (2)(b) must be made on July 1 of each year.

(5) On receipt of the money allocated as provided in subsection (2)(a), the county treasurer shall distribute the money in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.

(6) The allocations required in subsection (2)(a) are considered statutory appropriations as described in 17-7-502.

History: En. Sec. 3, Ch. 453, L. 1987; amd. Sec. 8, Ch. 628, L. 1989.

67-3-206. Schedule of fees in lieu of tax for aircraft. (1) The appropriate fee in lieu of tax imposed on aircraft is based on the age and type of aircraft and must be determined from the following schedule:

	YEARS				
	0 - 5	6 - 10	11 - 20	21 - 30	31 - 40
Single engine, fixed gear, 200 horsepower and under	$ 300	$ 175	$100	$ 50	$ 25
Single engine, fixed gear, over 200 horsepower	500	250	150	75	50
Single engine, retractable gear, 200 horsepower and under	600	300	175	100	75
Single engine, retractable gear, over 200 horsepower	700	400	200	125	100
Multi-engine, piston engine	800	500	250	175	150
Helicopter, piston engine	700	450	225	150	125
Single engine jet helicopter, prop jet	1,500	700	450	300	175
Multi-engine jet helicopter, prop jet	2,000	1,000	600	400	200
Jet engine, no propeller	3,000	1,500	800	500	250

(2) (a) Except as provided in subsection (2)(b), the age of an aircraft is determined by subtracting the manufacturer's designated model year from the current calendar year.

(b) If the purchase year of an aircraft precedes the designated model year of the aircraft and the aircraft is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.

(3) The fee in lieu of tax imposed on any glider, ultralight, gyrocopter, balloon, homebuilt aircraft, antiques, or any aircraft over 40 years old is $20.

History: En. Sec. 4, Ch. 453, L. 1987; amd. Sec. 7, Ch. 402, L. 1997.

67-3-207 through 67-3-210 reserved.

67-3-211. Aircrew licensing. Except as provided in 67-3-102, a person may not engage in aeronautics as an aircrew member in this state unless the person has from the department an effective certificate of registration of an appropriate effective aircrew member's license, certificate, or permit issued or approved by the United States government authorizing the aircrew member to engage in the particular class of aeronautics in which the aircrew member is engaged.

History: En. Sec. 9, Ch. 152, L. 1945; amd. Sec. 10, Ch. 348, L. 1974; R.C.M. 1947, 1-301(part); amd. Sec. 3, Ch. 157, L. 1983; amd. Sec. 8, Ch. 279, L. 1993.

67-3-212. Flight plan required. (1) The pilot of each flight carrying passengers and originating at a Montana public airport and to be flown under visual flight rules over a distance greater than 250 nautical miles is required to file a flight plan with the federal aviation administration.

(2) The department may adopt rules necessary to implement the provisions of this section.

History: En. Sec. 1, Ch. 417, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

67-3-213 through 67-3-220 reserved.

67-3-221. Repealed. Sec. 1, Ch. 373, L. 1985.

History: En. Sec. 11, Ch. 152, L. 1945; amd. Sec. 12, Ch. 348, L. 1974; R.C.M. 1947, 1-303.

Part 3
Airport Licensing
(Repealed. Sec. 1, Ch. 398, L. 1985)

Part Compiler's Comments

Histories of Repealed Sections:

67-3-301. En. Sec. 12, Ch. 152, L. 1945; amd. Sec. 13, Ch. 348, L. 1974; R.C.M. 1947, 1-304.

67-3-302. En. Sec. 13, Ch. 152, L. 1945; amd. Sec. 14, Ch. 348, L. 1974; R.C.M. 1947, 1-305.

67-3-303. En. Sec. 14, Ch. 152, L. 1945; amd. Sec. 15, Ch. 348, L. 1974; R.C.M. 1947, 1-306.

67-3-304. En. Sec. 16, Ch. 152, L. 1945; amd. Sec. 16, Ch. 348, L. 1974; R.C.M. 1947, 1-308.

67-3-305. En. Sec. 15, Ch. 152, L. 1945; R.C.M. 1947, 1-307.

67-3-306. En. Sec. 17, Ch. 152, L. 1945; R.C.M. 1947, 1-309.

Part 4
Air Operators and Air Carriers

67-3-401. Commercial air operators — insurance. The department shall require every commercial air operator to procure and continue in effect, as long as the commercial air operator continues to offer its services for compensation, adequate protection against liability imposed by law upon a commercial air operator for the payment of damages for personal bodily injuries, including death resulting from those injuries, and property damage as a result of an accident.

History: En. Sec. 4, Ch. 122, L. 1967; amd. Sec. 19, Ch. 348, L. 1974; R.C.M. 1947, 1-314.

67-3-402. Amount of insurance. The department, after a public hearing, shall set the amount of liability insurance, required by 67-3-401, which is reasonably necessary to provide adequate compensation for damage incurred through an accident involving a commercial air operator.

History: En. Sec. 5, Ch. 122, L. 1967; amd. Sec. 20, Ch. 348, L. 1974; R.C.M. 1947, 1-315.

67-3-403. Evidence of insurance. (1) The protection required under 67-3-401, covering each aircraft used or to be used in commercial operations for compensation, shall be evidenced by providing one of the following to the department:

(a) a copy of the policy of insurance issued by a company authorized to write the insurance in the state;

(b) a bond of a surety company authorized to write surety bonds in the state; or

(c) evidence of the qualification of the commercial air operator as a self-insurer as may be authorized by the department.

(2) With the consent of the department, a copy of an insurance policy, certified by the company issuing it to be a true copy of the original policy, a photostatic copy of the original policy, an abstract of the provisions of the policy, or a certificate of insurance issued by the company issuing the policy may be filed with the department instead of the original or a duplicate or counterpart of the policy.

(3) The department may accept policies of insurance written by unauthorized insurers if the policies of insurance meet the rules adopted by the department.

History: En. Sec. 6, Ch. 122, L. 1967; amd. Sec. 21, Ch. 348, L. 1974; R.C.M. 1947, 1-316.

Cross-References

Guaranty, indemnity, and suretyship, Title 28, ch. 11.

Copy of policy to mortgagor or pledgor, 33-15-412.

67-3-404. Continuation of insurance — notice upon cancellation. The protection against liability shall be continued in effect as long as the commercial air operator continues to offer his services for compensation. The policy of insurance or surety bond shall not be cancelable on less than 30 days' written notice to the department, except in the event of cessation of operations as a commercial air operator.

History: En. Sec. 8, Ch. 122, L. 1967; amd. Sec. 22, Ch. 348, L. 1974; R.C.M. 1947, 1-318.

67-3-405. Violations. A commercial air operator who knowingly refuses or fails to procure protection against liability as required by 67-3-401 is guilty of a misdemeanor, and each day during which that commercial air operator continues in default constitutes a separate offense.

History: En. Sec. 10, Ch. 122, L. 1967; amd. Sec. 24, Ch. 348, L. 1974; R.C.M. 1947, 1-320.

Cross-References

Sentence when no penalty specified, 46-18-212.

67-3-406 through 67-3-420 reserved.

67-3-421 through 67-3-429. Repealed. Sec. 1, Ch. 422, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

67-3-421. En. Sec. 2, Ch. 171, L. 1967; amd. Sec. 27, Ch. 348, L. 1974; R.C.M. 1947, 1-323(1).

67-3-422. En. 1-323.1 by Sec. 28, Ch. 348, L. 1974; R.C.M. 1947, 1-323.1.

67-3-423. En. 1-323.2 by Sec. 29, Ch. 348, L. 1974; R.C.M. 1947, 1-323.2.

67-3-424. En. 1-323.3 by Sec. 30, Ch. 348, L. 1974; R.C.M. 1947, 1-323.3.

67-3-425. En. 1-323.4 by Sec. 31, Ch. 348, L. 1974; R.C.M. 1947, 1-323.4.

67-3-426. En. 1-323.5 by Sec. 32, Ch. 348, L. 1974; R.C.M. 1947, 1-323.5.

67-3-427. En. 1-323.6 by Sec. 33, Ch. 348, L. 1974; R.C.M. 1947, 1-323.6.

67-3-428. En. Sec. 3, Ch. 171, L. 1967; amd. Sec. 1, Ch. 208, L. 1969; amd. Sec. 34, Ch. 348, L. 1974; R.C.M. 1947, 1-324.

67-3-429. En. Sec. 1, Ch. 171, L. 1967; amd. Sec. 25, Ch. 348, L. 1974; R.C.M. 1947, 1-322.

CHAPTER 4

NOISE, HEIGHT, AND LAND USE REGULATION

Part 1 — General Provisions

67-4-101. Legislative finding and purpose.
67-4-102. Definitions.

Part 2 — Airport Influence Areas

67-4-201. Designation of airport influence areas.
67-4-202. Temporary effect of designation.
67-4-203. Development of criteria for regulation of influence area.
67-4-204. Amendment of criteria — redesignation of influence area.
67-4-205 through 67-4-210 reserved.
67-4-211. State lands.

Part 3 — Rules, Permits, and Variances

67-4-301. Local government to adopt rules.
67-4-302. Rulemaking — notice and hearing.
67-4-303. Rules to be reasonable — prior nonconforming uses.
67-4-304. Rules relative to zoning ordinances.
67-4-305 through 67-4-310 reserved.
67-4-311. Permit system.
67-4-312. Board of adjustment.
67-4-313. Variance.
67-4-314. Conditions on permit or variance.

Part 4 — Remedies

67-4-401. Penalty.
67-4-402. Injunction.

Chapter Cross-References

Acquisition of landing fields and parking areas for aircraft, 7-14-4801.

Public nuisance, 45-8-111.

Part 1

General Provisions

67-4-101. Legislative finding and purpose. It is hereby found that tall trees and structures and certain types of development located in the vicinity of airports endanger the lives and property of users of the airport and of occupants of land in its vicinity. It is also found that the location of tall trees and structures and certain types of development near airports reduce the area available for landing, taking off, and maneuvering aircraft and increase the likelihood of legal action against a local government for noise nuisance, thus destroying the utility of the airports and the public investment in them. It is therefore the purpose of this chapter to promote the public health, safety, and general welfare by the development of compatible noise, height, and land use regulations.

History: En. 1-724 by Sec. 1, Ch. 551, L. 1977; R.C.M. 1947, 1-724.

67-4-102. Definitions. (1) The definitions in 67-1-101 apply to this chapter.

(2) In this chapter the following definitions also apply:

(a) "Airport" means, for the purpose of this chapter, only those airports included on the national airport system plan.

(b) "Airport influence area" means all land in the proximity of an airport, the use of which may be affected by the airport's existence.

(c) "Local government" means any county or incorporated city or town having an airport influence area partially or entirely within its jurisdictional limits.

History: En. 1-725 by Sec. 2, Ch. 551, L. 1977; R.C.M. 1947, 1-725.

Part 2

Airport Influence Areas

67-4-201. Designation of airport influence areas. (1) A local government with an airport shall designate an airport influence area around the airport. The designation must be based on federal aviation administration rules and guidelines. However, an airport influence area may not extend more than 10,000 feet out from the thresholds of the primary instrument approach runway or exceed 1 mile in width on each side of the primary instrument approach runway and its extended centerline. A public hearing must be held by the local government following the procedure prescribed in 67-4-302.

(2) A map of the designation must be filed with the county clerk and recorders of the affected counties and the city clerks of the affected cities and towns.

History: En. 1-726 by Sec. 3, Ch. 551, L. 1977; R.C.M. 1947, 1-726; amd. Sec. 2, Ch. 279, L. 1993.

67-4-202. Temporary effect of designation. Upon the designation of an airport influence area, the use of land within the airport influence area shall be restricted as to height consistent with part 77, federal aeronautics regulations, until rules are adopted pursuant to this chapter. This restriction does not affect nonconforming uses and areas already zoned on July 1, 1977, and may not be imposed for a period of more than 1 year. After the designation of an airport influence area, a person may not recover from a local government, an airport authority, an airport operator, or an airport owner damages caused by noise and vibrations from normal and anticipated normal airport operations.

History: En. 1-727 by Sec. 4, Ch. 551, L. 1977; R.C.M. 1947, 1-727; amd. Sec. 3, Ch. 279, L. 1993.

Cross-References

Public nuisance, 45-8-111.

67-4-203. Development of criteria for regulation of influence area. (1) The local government shall devise criteria and guidelines for regulation of the airport influence area.

(2) The criteria and guidelines for noise regulations shall be designed to promote the public health, safety, and general welfare, and the criteria and guidelines for height and land use regulations shall be designed solely to promote the public safety. The criteria and guidelines shall, at the minimum, give reasonable consideration to, among other things:

(a) the safety of airport users and persons and property in the vicinity of the airport;

(b) the character of the flying operations conducted or expected to be conducted at the airport;

(c) the magnitude and duration of noise produced by aircraft and the number of aircraft flybys;

(d) the nature of the terrain;

(e) the future development of the airport;

(f) the views and mandates of the federal agency charged with the fostering of civil aeronautics as to the aerial surfaces necessary for safe flying operations.

History: En. 1-728 by Sec. 5, Ch. 551, L. 1977; R.C.M. 1947, 1-728.

67-4-204. Amendment of criteria — redesignation of influence area. (1) When circumstance so requires, the local government may amend the criteria and guidelines.

(2) The local government may redefine the boundaries of the influence area of an airport whenever an amendment to the criteria and guidelines so requires or whenever the airport site boundaries are altered.

History: En. 1-732 by Sec. 9, Ch. 551, L. 1977; R.C.M. 1947, 1-732.

67-4-205 through 67-4-210 reserved.

67-4-211. State lands. When an airport influence area lies partially or entirely on state-owned lands, the department of natural resources and conservation shall administer the affected lands in conformance with the criteria and guidelines prescribed by the local governing body.

History: En. 1-731 by Sec. 8, Ch. 551, L. 1977; R.C.M. 1947, 1-731; amd. Sec. 172, Ch. 418, L. 1995.

Cross-References

Administration of state lands, Title 77, ch. 1.

Part 3
Rules, Permits, and Variances

Part Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Zoning, Title 67, ch. 6, part 2.

No limitation on airport hazard zoning, 67-10-231, 67-11-241.

67-4-301. Local government to adopt rules. Within 1 year of the designation of an airport influence area, each local government affected shall adopt and provide for the administration of rules restricting the height to which structures may be erected and trees allowed to grow within the airport influence area.

History: **En. 1-729 by Sec. 6, Ch. 551, L. 1977; R.C.M. 1947, 1-729.**

67-4-302. Rulemaking — notice and hearing. Before a local government adopts or amends rules governing the airport influence area, it must hold a public hearing thereon. Unless otherwise specifically provided, when notice of a hearing or other official act is required by this title, the following shall apply:

(1) The notice shall be published two times with at least 7 days separating each publication. The first publication shall be no more than 21 days prior to the action and the last no less than 3 days prior to the action.

(2) The published notice shall contain:

(a) the date, time, and place at which the hearing or other action will occur;

(b) a brief statement of the action to be taken.

History: **En. 1-730 by Sec. 7, Ch. 551, L. 1977; R.C.M. 1947, 1-730.**

67-4-303. Rules to be reasonable — prior nonconforming uses. All rules adopted under this chapter shall be reasonable and may not require the removal or alteration of any structure or tree lawfully in existence when the rules become effective. Such uses are to be treated as prior nonconforming uses which may continue, but rules may prohibit their expansion or their reconstruction or replacement following destruction or substantial damage. Rules may further require that trees in place at the time the rules take effect be maintained by the local government, at its expense, at heights attained at that time. Land in existing residential subdivisions or platted for residential subdivision at the time rules are adopted may continue to be used for residential purposes.

History: **En. 1-738 by Sec. 15, Ch. 551, L. 1977; R.C.M. 1947, 1-738.**

67-4-304. Rules relative to zoning ordinances. (1) If a local government has adopted a zoning ordinance, any rules adopted under this chapter may be made a part of the zoning ordinance and may be administered and enforced in connection with it. However, the zoning ordinance may not limit the effectiveness or scope of the rules adopted pursuant to this chapter.

(2) Where a conflict exists between the rules adopted pursuant to this chapter and any zoning ordinances or resolutions applicable to the same area, the more stringent limitation or requirement shall prevail.

History: **En. 1-737 by Sec. 14, Ch. 551, L. 1977; R.C.M. 1947, 1-737.**

Cross-References

Municipal zoning, Title 76, ch. 2, part 3.

67-4-305 through 67-4-310 reserved.

67-4-311. Permit system. (1) The rules adopted pursuant to this chapter shall provide for a permit system for erecting new structures, changing uses of land or structures, and substantially altering, repairing, or replacing existing structures within the airport influence area.

(2) No material change may be made in the use of land and no structure or tree may be erected, altered, planted, or otherwise established in an airport influence area unless a permit for the use has been granted.

(3) No permit may be granted which would allow the establishment of an airport hazard or that would allow a nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of

the designation of the airport influence area or any subsequent revisions to it or than it was prior to the application for a permit.

History: **En. 1-734 by Sec. 11, Ch. 551, L. 1977; R.C.M. 1947, 1-734.**

67-4-312. Board of adjustment. (1) All rules adopted pursuant to this chapter shall provide for a board of airport hazard adjustment consisting of five members to be appointed for terms and in the manner provided in 76-2-321 through 76-2-328.

(2) All of the provisions of 76-2-321 through 76-2-328 relating to appeals and judicial review are applicable to grievances relating to rules, variances, or permits.

(3) Where a local government has appointed a board of adjustment under the provisions of 76-2-221 through 76-2-228 or 76-2-321 through 76-2-328, the local government may designate the members of that board as the board of airport hazard adjustment required by this chapter, in which case the terms of such members for purposes of this chapter are concurrent with their terms as members of the board of adjustment.

History: **En. 1-736 by Sec. 13, Ch. 551, L. 1977; R.C.M. 1947, 1-736.**

67-4-313. Variance. (1) Any person desiring to erect or increase the height of a structure, permit the growth of a tree, or use property in violation of the rules adopted pursuant to this chapter may apply to the board of airport hazard adjustment for a variance from the rules.

(2) A variance must be granted where a literal application or enforcement of the rules would result in substantial practical difficulty or unnecessary hardship and where the variance would not be contrary to the public interest.

(3) A variance must be granted for a nonconforming use where there is no immediate hazard to safe flying operations or persons and property in the vicinity of the airport and where the noise or vibrations from normal and anticipated normal operations of the airport would not be likely to cause structural damage.

(4) Within an airport influence area a person who obtains a variance for building a structure which is a nonconforming use under rules adopted pursuant to this chapter or a person who takes or buys property subject to a variance is on notice that the airport existed before the variance was granted and that normal and anticipated normal operations of the airport will result in noise and vibrations being projected over the property. A person using a structure built under a variance may not collect damages from a local government, an airport authority, an airport operator, or an airport owner for interference with the enjoyment of that structure caused by noise and vibrations from normal and anticipated normal airport operations.

History: **En. 1-733 by Sec. 10, Ch. 551, L. 1977; R.C.M. 1947, 1-733; amd. Sec. 4, Ch. 279, L. 1993.**

Cross-References

Public nuisance, 45-8-111.

Permits — variances, 67-6-207.

67-4-314. Conditions on permit or variance. Any permit or variance granted pursuant to this chapter may require the owner of the structure or tree in question to permit the local government, at its expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of an airport hazard.

History: **En. 1-735 by Sec. 12, Ch. 551, L. 1977; R.C.M. 1947, 1-735.**

Part 4
Remedies

67-4-401. Penalty. Any person who violates any provision of this chapter or any rules adopted pursuant to it is guilty of a misdemeanor and punishable by a fine not to exceed $500, imprisonment in a county jail for a period not to exceed 6 months, or both. Each day a violation continues to exist constitutes a separate offense.

History: **En. 1-739 by Sec. 16, Ch. 551, L. 1977; R.C.M. 1947, 1-739(1).**

Cross-References

Enforcement, 67-5-211.

Penalty — injunction, 67-6-211.

67-4-402. Injunction. A local governing body may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of this chapter or the rules adopted under it.

History: **En. 1-739 by Sec. 16, Ch. 551, L. 1977; R.C.M. 1947, 1-739(2).**

Cross-References

Injunctions, Title 27, ch. 19.

Penalty — injunction, 67-6-211.

CHAPTER 5
AIRPORT HAZARD REGULATION

Part 1 — General Provisions

67-5-101. Purpose.
67-5-102. Exception — emergency landing strips.

Part 2 — Regulation and Restriction

67-5-201. Regulation of building heights.
67-5-202. Regulation of existing structures — power of acquisition.
67-5-203. Duty to acquire permit.
67-5-204. Restriction — lights.
67-5-205 through 67-5-210 reserved.
67-5-211. Enforcement.
67-5-212. Penalty.

Part 1
General Provisions

67-5-101. Purpose. For the purpose of ensuring safety from death or injury for aeronauts and passengers, to protect the property of those engaged in aeronautics, and to encourage and promote air travel and transportation of mail, passengers, express, and freight by air, it is considered necessary to eliminate dangerous obstructions of air space in the vicinity of airports or landing fields which may now be or which may hereafter be acquired, owned, operated, controlled, or maintained by the United States, the state of Montana or any county or municipality thereof. In order to promote the public order, health, and safety by providing unobstructed air space for the safe descent, landing, ascent, and operation of aircraft utilizing public airports in the state of Montana, the height of buildings and other structures in the vicinity of the airports and landing fields in the state of Montana owned, leased, operated, maintained, or controlled by any of those public authorities shall be regulated and restricted as hereafter provided.

History: En. Sec. 1, Ch. 12, L. 1939; amd. Sec. 3, Ch. 232, L. 1977; R.C.M. 1947, 1-701.

67-5-102. Exception — emergency landing strips. This chapter shall not apply to any landing fields or strips now established or hereafter established by the civil aeronautics authority of the United States government, known as "emergency landing strips", which do not provide at least 1,800 feet of landing area in all directions and which do not provide facilities for the housing, supply, and servicing of aircraft.

History: En. Sec. 7, Ch. 12, L. 1939; R.C.M. 1947, 1-707.

Part 2

Regulation and Restriction

67-5-201. Regulation of building heights. (1) The height of buildings and other structures shall be regulated for the purposes set forth in 67-5-101, considering among other things:

(a) requirements and facilities necessary to secure the safe descent, landing, ascent, and operation of aircraft utilizing the public airports and landing fields in the state of Montana;

(b) hazards from the obstruction of air space and the relation of the height of buildings and other structures in the vicinity of such airports and landing fields to such hazards;

(c) the area within which buildings and other structures may dangerously obstruct air space in the vicinity of public airports and landing fields and the height of buildings or other structures within such area which is consistent with the safe use of such airports and landing fields; and

(d) the maintenance and use of either obstruction markers or lights, or both, upon buildings and other structures within such area as safety devices.

(2) The height of buildings and other structures is regulated and restricted within a distance of 2 miles from any public airport or landing field, measured at a right angle from any side or in a radial line from any corner of the established boundary line thereof, in any and all directions, as follows:

(a) The trapezoidal portion of the total 2-mile zone area, 500 feet in width at the boundary of the field or airport and broadening to a width of 2,500 feet 2 miles distant, the centerline of which is a continuation of the centerline of each runway at and upon such public airports and landing fields, known as the approach zone, may have no building or other structure or natural feature or object of any kind therein, the height of which is more than one-twentieth its distance from the nearest boundary of the airport or landing field.

(b) The remaining portion of the 2-mile zone area surrounding such public airports and landing fields, lying between the approach zones and known as turning zones, may have no building or other structure or natural feature or object of any kind therein, the height of which is more than one-seventh its distance from the nearest boundary of the airport or landing field.

(3) In measuring distances and heights to determine the zone standard, measurements shall be taken from the nearest side of the building or structure or other object to the nearest side of the airport or landing field. In the event of airports having boundaries not regular, the nearest established perimeter of such port and field shall be used, as distinguished from the actual boundary.

History: En. Sec. 2, Ch. 12, L. 1939; amd. Sec. 4, Ch. 232, L. 1977; R.C.M. 1947, 1-702.

67-5-202. Regulation of existing structures — power of acquisition. With respect to any building or other structure existing on February 7, 1939, which does not conform to the regulations of this chapter in the manner of height, the governmental authority affected thereby (whether the United States, the state of Montana, the several counties, or the several municipalities) in its own right and name, to protect its own airports and landing fields and to carry out the purposes and provisions of this chapter, shall have and is hereby given the right and authority to acquire by purchase, grant, or condemnation, such estate or interest in any such building or structure or other object, whether natural object or not, and/or in the lands upon which situated as is necessary to vest full and absolute ownership and control in perpetuity of the space above such land to the extent necessary to correct or abate the height of any such nonconforming building or other structure or object to meet the requirements of this chapter as to height limitation within the zones designated.

History: En. Sec. 5, Ch. 12, L. 1939; R.C.M. 1947, 1-705.

67-5-203. Duty to acquire permit. (1) Each person, firm, or corporation in this state proposing to erect, establish, or maintain any building or other structure that would exceed the height limit established by law or to grow any natural object that would exceed such limit when grown, whenever the proposed erection or growth is within 2 miles of a public airport or landing field, shall apply to the proper officer of the United States or the state of Montana or any county or municipality thereof, whichever of those bodies has control of the airport or landing field affecting the area, for a permit to erect, establish, or maintain the structure, building, or object proposed.

(2) No permit may be granted unless the specifications of the building or other structure or object reveal that the total height does not or will not exceed the height limits fixed by law for the zone in which the same is to be established.

(3) No permit may be issued in violation of this section, and any permit which is issued in violation of this section is void.

History: En. Sec. 4, Ch. 12, L. 1939; amd. Sec. 5, Ch. 232, L. 1977; R.C.M. 1947, 1-704.

67-5-204. Restriction — lights. No searchlight, beacon light, or other glaring light shall be used, maintained, or operated within said Montana airport zoning areas so that the same shall reflect, glare, or shine upon or in the direction of the airports.

History: En. Sec. 8, Ch. 12, L. 1939; R.C.M. 1947, 1-708.

67-5-205 through 67-5-210 reserved.

67-5-211. Enforcement. A public body or governmental authority owning, operating, or maintaining a public airport or landing field or that creates a municipal or regional airport authority for that purpose shall enforce the provisions of this chapter as it pertains to areas surrounding the particular airport under the control of the body or authority. This chapter must be enforced in either a court of law or of equity in the state of Montana having jurisdiction of the action. Cases must be instituted in the name of the governmental body charged with the enforcement of this chapter. An action may be brought to prevent the erection, construction, or maintenance of buildings or other structures or parts of buildings or structures as may exceed the height limits fixed by this law or to restrain, correct, or abate any violation and to prevent the occupancy and use of any part of a building or structure erected in violation of this law.

History: En. Sec. 3, Ch. 12, L. 1939; R.C.M. 1947, 1-703; amd. Sec. 5, Ch. 279, L. 1993.

Cross-References

Noise, height, and land use regulation — penalty, 67-4-401.

Airport zoning — penalty — injunction, 67-6-211.

67-5-212. Penalty. Any person or firm or corporation violating any of the provisions of this law shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than $500 or by imprisonment for a period of not more than 6 months or by both such fine and imprisonment. Each such person, firm, or corporation shall be deemed guilty of a separate offense for every day during any portion of which any violation of this law is committed, continued, or permitted by such person, firm, or corporation and shall be punishable as provided by such law.

History: En. Sec. 12, Ch. 12, L. 1939; R.C.M. 1947, 1-709.

CHAPTER 6

AIRPORT ZONING ACT

Part 1 — General Provisions

67-6-101. Short title.
67-6-102. Legislative finding and purpose.
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Part 2 — Zoning

67-6-201. Airport zoning power.
67-6-202. Airport zoning regulations — procedure — commission.
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67-6-211. Penalty — injunction.

Part 3 — Miscellaneous Provisions

67-6-301. Acquisition of property rights when zoning not sufficient.

Chapter Cross-References

Planning and zoning, Title 76, ch. 2.

Part 1
General Provisions

67-6-101. Short title. This chapter shall be known and may be cited as the "Airport Zoning Act".

History: En. Sec. 14, Ch. 287, L. 1947; R.C.M. 1947, 1-723.

67-6-102. Legislative finding and purpose. (1) It is hereby found that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking off, and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein.

(2) Accordingly, it is hereby declared:

(a) that the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question;

(b) that it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented; and

(c) that this should be accomplished, to the extent legally possible, by exercise of the police power, without compensation.

(3) It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds and acquire land or property interests therein.

History: En. Sec. 2, Ch. 287, L. 1947; R.C.M. 1947, 1-711.

67-6-103. Constitutional restriction. In any case in which airport zoning regulations adopted under this chapter, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular structure or parcel of land to such an extent or to be so onerous in their application to such a structure or parcel of land as to constitute a taking or deprivation of that property in violation of the constitution of this state or the constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land.

History: En. Sec. 10, Ch. 287, L. 1947; R.C.M. 1947, 1-719.

Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

Eminent domain, Art. II, sec. 29, Mont. Const.

Private Property Assessment Act, Title 2, ch. 10, part 1.

Part 2
Zoning

Part Cross-References

Rules, permits, and variances, Title 67, ch. 4, part 3.

No limitation on airport hazard zoning, 67-10-231, 67-11-241.

67-6-201. Airport zoning power. (1) In order to prevent the creation or establishment of airport hazards, every political subdivision having an airport hazard area within its territorial limits may adopt, administer, and enforce, under the police power and in the manner and upon the conditions prescribed, airport zoning regulations for such airport hazard area, which regulations may divide such area into zones and, within such zones, specify the land uses permitted and regulate and restrict the height to which structures and trees may be erected or allowed to grow.

(2) Where an airport is owned or controlled by a political subdivision and any airport hazard area appertaining to such airport is located outside the territorial limits of said political subdivision, within or without the state, the political subdivision owning or controlling the airport and the political subdivision within which the airport hazard area is located may, by ordinance or resolution duly adopted, create a joint airport zoning board, which board shall have the same power to adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area in question as that vested by subsection (1) in the political subdivision within which such area is located. Each such joint board shall have as members two representatives appointed by each political subdivision participating in its creation and in addition a chairman elected by a majority of the members so appointed.

(3) If in the judgment of a political subdivision owning or controlling an airport, the political subdivision within which is located an airport hazard area appertaining to that airport has failed to adopt or enforce reasonably adequate airport zoning regulations for such area under subsection (1) and if that political subdivision has refused to join in creating a joint airport zoning board as authorized in subsection (2), the political subdivision owning or controlling the airport may itself adopt, administer, and enforce airport zoning regulations for the airport hazard area in question. In the event of conflict between such regulations and any airport zoning regulations adopted by the political subdivision within which the airport hazard area is located, the regulations of the political subdivision owning or controlling the airport shall govern and prevail.

History: En. Sec. 3, Ch. 287, L. 1947; R.C.M. 1947, 1-712.

67-6-202. Airport zoning regulations — procedure — commission. (1) In adopting, amending, and repealing airport zoning regulations under this chapter, the political subdivision or joint airport zoning board shall follow the procedure prescribed by the laws of this state for the adoption, amendment, or repeal of comprehensive zoning regulations, as provided in Title 76, chapter 2, part 3.

(2) Prior to the initial zoning of any airport hazard area under this chapter, the political subdivision or joint airport zoning board which is to adopt the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the legislative body of the political subdivision or the joint airport zoning board shall not hold its public hearings or take other action until it has received the final report of such commission. Where a city planning commission or comprehensive zoning commission already exists, it may be appointed as the airport zoning commission.

History: En. Sec. 5, Ch. 287, L. 1947; R.C.M. 1947, 1-714.

67-6-203. Airport zoning regulations — requirements. (1) All airport zoning regulations adopted under this chapter shall be reasonable, and none shall impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of this chapter. In determining what regulations it may adopt, each political subdivision and joint airport zoning board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put and adaptable.

(2) No airport zoning regulations adopted under this chapter shall require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended or otherwise interfere with the continuance of any nonconforming use, except as provided in 67-6-207(3).

History: En. Sec. 6, Ch. 287, L. 1947; R.C.M. 1947, 1-715.

67-6-204. Zoning regulations — merger or conflict. (1) In the event that a political subdivision had adopted or hereafter adopts a comprehensive zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations applicable to the same area or portion thereof may be incorporated in and made a part of such comprehensive zoning regulations and be administered and enforced in connection therewith.

(2) In the event of conflict between any airport zoning regulations adopted under this chapter and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter and whether such other regulations were adopted by the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail.

History: En. Sec. 4, Ch. 287, L. 1947; R.C.M. 1947, 1-713.

67-6-205. Airport zoning regulations — administration. All airport zoning regulations adopted under this chapter shall provide for the administration and enforcement of such regulations by an administrative agency which may be an agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations or of one of the political subdivisions which participated in the creation of the joint airport zoning board adopting the regulations, if satisfactory to that political subdivision; but in no case shall such administrative agency be or include any member of the board of adjustment. The duties of any administrative agency designated pursuant to this chapter shall include that of hearing and deciding all permits under 67-6-207(1), but such agency shall not have or exercise any of the powers herein delegated to the board of adjustment.

History: En. Sec. 8, Ch. 287, L. 1947; R.C.M. 1947, 1-717.

67-6-206. Board of adjustment. All airport zoning regulations adopted under this chapter shall provide for a board of adjustment to be appointed in the manner and have and exercise all the powers provided in 76-2-321 through 76-2-328, and each and all of the provisions of said sections relating to appeals and judicial review shall be applicable to this chapter.

History: En. Sec. 9, Ch. 287, L. 1947; R.C.M. 1947, 1-718.

67-6-207. Permits — variances. (1) When advisable to facilitate the enforcement of this chapter, a system may be established for granting permits to establish or construct new structures and other uses. In any event, before any nonconforming structure may be replaced with a taller one or any nonconforming tree allowed to grow higher or be replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations authorizing such replacement or change. No such permit shall be granted that would allow the structure to become a greater hazard to air navigation than it was when the applicable regulation was adopted. Whenever the administrative agency determines that a nonconforming structure or tree has been abandoned or more than 80% torn down, destroyed, deteriorated, or decayed, no permit shall be granted that would allow said structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations. Except as indicated, all applications for permits for replacement, change, or repair of nonconforming uses shall be granted.

(2) Any person desiring to erect any structure, increase the height of any structure, permit the growth of any tree, or otherwise use his property in violation of airport zoning regulations adopted under this chapter may apply to the board of adjustment for a variance from the zoning regulations in question. Such variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of the regulations and this chapter. Any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this chapter.

(3) In granting any permit or variance under this section, the administrative agency or board of adjustment may, if it deems such action advisable to effectuate the purposes of this chapter and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

History: En. Sec. 7, Ch. 287, L. 1947; R.C.M. 1947, 1-716.

Cross-References

Noise, height, and land use regulation — conditions on permits and variances, 67-4-313, 67-4-314.

67-6-208 through 67-6-210 reserved.

67-6-211. Penalty — injunction. Each violation of this chapter or of any regulations, orders, or rulings promulgated or made pursuant to this chapter shall constitute a misdemeanor and shall be punishable by a fine of not more than $500 or imprisonment for not more than 6 months or by both such fine and imprisonment, and each day a violation continues to exist shall constitute a separate offense. In addition the political subdivision or agency adopting zoning regulations under this chapter may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of this chapter or of airport zoning regulations adopted under this chapter or of any order or ruling made in connection with their administration or enforcement; and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purposes of this chapter and of the regulations adopted and orders and rulings made pursuant thereto.

History: En. Sec. 11, Ch. 287, L. 1947; R.C.M. 1947, 1-720.

Cross-References

Injunctions, Title 27, ch. 19.

Noise, height, and land use regulation — penalty and injunction, 67-4-401, 67-4-402.

Restrictions on height of structures and lights — enforcement and penalty, 67-5-211, 67-5-212.

Part 3

Miscellaneous Provisions

67-6-301. Acquisition of property rights when zoning not sufficient. The political subdivision within which the property or nonconforming use is located or the political subdivision owning the airport or served by it may acquire, by purchase, grant, or condemnation in the manner provided by the law under which political subdivisions are authorized to acquire real property for public purposes, such air right, aviation easement, or other estate or interest in the property or nonconforming structure or use in question as may be necessary to effectuate the purposes of this chapter, in any case in which:

(1) it is desired to remove, lower, or otherwise terminate a nonconforming structure or use;

(2) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this chapter; or

(3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations.

History: En. Sec. 12, Ch. 287, L. 1947; R.C.M. 1947, 1-721.

Cross-References

Restrictions on annexation power, 7-2-4503.

Acquisition of landing fields and parking areas for aircraft, 7-14-4801.

State airports — acquisition, 67-2-301.

Acquisition and establishment of airports and landing fields, 67-10-102.

Joint Airport Board, 67-10-205.

General powers of authority, 67-11-201.

Eminent domain, Title 70, ch. 30.

CHAPTERS 7 THROUGH 9

RESERVED

CHAPTER 10

MUNICIPAL AIRPORTS

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67-10-102. Acquisition and establishment of airports and landing fields.
67-10-103. Public purpose.
67-10-104. Construction.

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67-10-406. Tax exemption.

Chapter Cross-References

Municipal and regional airport authorities, Title 67, ch. 11.

Out-of-state airport jurisdiction — reciprocity, 67-11-401.

Part 1
General Provisions

67-10-101. Short title. This chapter may be cited as the "Municipal Airports Act".

History: En. Sec. 22, Ch. 288, L. 1947; R.C.M. 1947, 1-828; amd. Sec. 2, Ch. 140, L. 1979.

67-10-102. Acquisition and establishment of airports and landing fields. (1) Counties, cities, and towns in this state may, either individually or by the joint action of a county and one or more of the cities and towns within its border, acquire by gift, deed, purchase, or condemnation land for airport or landing field purposes and thereon establish, construct, own, control, lease, equip, improve, operate, and regulate airports or landing fields for the use of airplanes and other aircraft and may use for such purpose or purposes any property suitable therefor that now or may at any time hereafter be acquired, owned, or controlled by such county, city, or town.

(2) In addition a county, city, or town may do the acts authorized by this section by acting jointly with one or more counties, with one or more cities, with one or more towns, or any combination of such counties, cities, or towns. Such airport need not be located, in whole or in part, within the limits of each subdivision participating in the joint venture.

History: En. Sec. 1, Ch. 108, L. 1929; re-en. Sec. 5668.35, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1941; amd. Sec. 1, Ch. 88, L. 1961; R.C.M. 1947, 1-801.

Cross-References

Power of city or town to acquire landing fields and parking areas, 7-14-4801.

State airports — acquisition, 67-2-301.

Acquisition of property rights when zoning not sufficient, 67-6-301.

Creation of airport board — funding — rules, 67-10-202.

67-10-103. Public purpose. (1) Any lands acquired, owned, controlled, or occupied by any county, city, or town, individually or pursuant to joint action as herein provided for the purposes enumerated in 67-10-102, are acquired, owned, controlled, and occupied for a public use and as a matter of public necessity, and such counties, cities, and towns, whether acting individually or jointly, have the right to acquire property for such purposes under the power of eminent domain as and for a public use or necessity.

(2) The acquisition of any land or interest therein pursuant to this chapter; the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, protection, and policing of airports and air navigation facilities, including the acquisition or elimination of airport hazards; and the exercise of any other powers herein granted to municipalities and other public agencies, to be severally or jointly exercised, are public and governmental functions, exercised for a public purpose and matters of public necessity and, in the case of any county, are county functions and purposes as well as public and governmental and, in the case of any municipality other than a county, are municipal functions and purposes as well as public and governmental. All land and other property and privileges acquired and used by or on behalf of any municipality or other public agency in the manner and for the purposes enumerated in this chapter are acquired and used for public and governmental purposes and as a matter of public necessity and, in the case of a county or municipality, for county or municipal purposes, respectively.

History: (1)En. Sec. 2, Ch. 108, L. 1929; re-en. Sec. 5668.36, R.C.M. 1935; amd. Sec. 2, Ch. 54, L. 1941; amd. Sec. 2, Ch. 88, L. 1961; Sec. 1-802, R.C.M. 1947; (2)En. Sec. 15, Ch. 288, L. 1947; Sec. 1-822, R.C.M. 1947; R.C.M. 1947, 1-802, 1-822; amd. Sec. 3, Ch. 140, L. 1979.

Cross-References

No immunity from suit, 2-9-111.

67-10-104. Construction. This chapter shall be so interpreted and construed as to make uniform so far as possible the laws and regulations of this state and other states and of the government of the United States having to do with the subject of municipal airports.

History: En. Sec. 19, Ch. 288, L. 1947; R.C.M. 1947, 1-826; amd. Sec. 4, Ch. 140, L. 1979.

Part 2

General Powers of Municipality Relating to Airports

Part Cross-References

Restrictions on annexation power, 7-2-4503.

67-10-201. General municipal powers. (1) Every municipality may, out of any appropriations or other money made available for such purposes, plan, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police airports and air navigation facilities, either within or without the territorial limits of such municipality and within or without the territorial boundaries of this state, including the construction, installation, equipment, maintenance, and operation at such airports of buildings and other facilities for the servicing of aircraft or for the comfort and accommodation of air travelers and the purchase and sale of supplies, goods, and commodities as an incident to the operation of its airport properties. For such purposes the municipality may use any available property that it may now or hereafter own or control and may, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, acquire property, real or personal, or any interest therein, including easements, in airport hazards or land outside the boundaries of an airport or airport site, as is necessary to permit safe and efficient operation of the airport; to permit the removal, elimination, obstruction-marking, or obstruction-lighting of airport hazards; or to prevent the establishment of airport hazards.

(2) The municipality may, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, acquire existing airports and air navigation facilities, provided however it may not acquire or take over any airport or air navigation facility owned or controlled by another municipality or public agency of this or any other state without the consent of such municipality or public agency.

(3) For the purposes of this chapter, a municipality may establish or acquire and maintain, within or bordering upon the territorial limits of the municipality, airports in, over, and upon any public waters of this state, any submerged lands under such public waters and any artificial or reclaimed lands which before the artificial making or reclamation thereof constituted a portion of the submerged lands under such public waters, and may construct and maintain terminal buildings, landing floats, causeways, roadways, and bridges for approaches to or connecting with any such airport, and landing floats and breakwaters for the protection thereof.

(4) All air navigation facilities established or operated by municipalities shall be supplementary to and coordinated in design and operation with those established and operated by the federal and state governments.

(5) A municipality may enter into any contracts necessary for the execution of the powers granted it and for the purposes provided by this chapter.

History: **En. Secs. 2, 13, Ch. 288, L. 1947; R.C.M. 1947, 1-809, 1-820; amd. Sec. 5, Ch. 140, L. 1979.**

Cross-References

Airport easement acquisition, 67-2-301.

General powers of authority, 67-11-201.

67-10-202. Creation of board — funding — rules. (1) The county, city, or town, acting individually or acting jointly as authorized by 67-10-102, having established an airport or landing field and acquired property for such purpose, may construct, improve, equip, maintain, and operate the same and for that purpose may create a board or body from the inhabitants of such county, city, or town, or such joint subdivisions of the state for the purpose of conferring upon them, and may confer upon them, the jurisdiction for the improvement, equipment, maintenance, and operation of such airport or landing field. The board of county commissioners, the city or town council, as the case may be, or the board of county commissioners and the council or councils under a joint venture may adopt rules and establish fees or charges for the use of such airport or landing field or may authorize such board or body to do so, subject, however, to the approval of the appointing power before the same shall take effect. All expenses of such construction, improvement, equipment, maintenance, and operation shall be a charge against such county, city, or town; or when a county, city, or town acts jointly under the authority herein given, such charges shall be against the joint subdivisions of the state and shall be apportioned according to benefits to accrue, the proportion to be paid by each to be fixed in advance by joint resolution of the governing bodies.

(2) For the purpose of meeting the charges mentioned when the airport or landing field is such joint venture, a joint fund shall be created and maintained into which each of the political subdivisions interested shall deposit its proportionate share in accordance with the predetermination of the board of county commissioners and council or councils affected.

(3) All disbursements from such fund shall be made by order of such joint board or body, if one be created as authorized, otherwise under such rules as the joint control by the commissioners and council or councils may adopt.

History: **En. Sec. 3, Ch. 108, L. 1929; re-en. Sec. 5668.37, R.C.M. 1935; amd. Sec. 3, Ch. 54, L. 1941; amd. Sec. 3, Ch. 88, L. 1961; R.C.M. 1947, 1-803.**

67-10-203. Mutual assistance. If any municipality determines that the public interest and the interests of the municipality will be served by assisting any other municipality or municipalities in exercising the powers and authority granted by this chapter, such municipality may furnish assistance by gift of real or personal property or lease or loan thereof with or without charge or interest. In appropriating such property or money and providing for such assistance by taxation, the issuance of bonds, or other means, the municipality may exercise all of its powers as though used for its own direct purposes as provided in this chapter.

History: **En. Sec. 12, Ch. 288, L. 1947; R.C.M. 1947, 1-819; amd. Sec. 6, Ch. 140, L. 1979.**

67-10-204. Joint exercise of powers. (1) For the purposes of 67-10-204 through 67-10-206, unless otherwise qualified, the term "public agency" includes municipality, as defined in this title; any agency of the state government and of the United States; and any municipality, political subdivision, and agency of another state; and the term "governing body" means the governing body of a county or municipality and the head of the agency if the public agency is other than a county or municipality.

(2) All powers, privileges, and authority granted to any municipality by this chapter may be exercised and enjoyed jointly with any public agency of this state and jointly with any public agency of any other state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise or enjoyment. If not otherwise authorized by law, any agency of the state government when acting jointly with any municipality may exercise and enjoy all of the powers, privileges, and authority conferred by this chapter upon a municipality.

(3) Any two or more public agencies may enter into agreements with each other for joint action pursuant to the provisions of 67-10-204 through 67-10-206. Concurrent action by ordinance, resolution, or otherwise of the governing bodies of the participating public agencies constitutes joint action. Each such agreement shall specify its duration; the proportionate interest which each public agency has in the property, facilities, and privileges involved; the proportion to be borne by each public agency of preliminary costs and costs of acquisition, establishment, construction, enlargement, improvement, and equipment of the airport or air navigation facility; the proportion of the expenses of maintenance, operation, regulation, and protection thereof to be borne by each; and such other terms as are required by the provisions of 67-10-204 through 67-10-206. The agreement may also provide for amendments thereof and conditions and methods of termination of the agreement; the disposal of all or any of the property, facilities, and privileges jointly owned, prior to or upon said property, facilities, and privileges, or any part thereof, ceasing to be used for the purposes provided in this chapter or upon termination of the agreement; the distribution of the proceeds received upon any such disposal and of any funds or other property jointly owned and undisposed of; the assumption or payment of any indebtedness arising from the joint venture which remains unpaid upon the disposal of all assets or upon a termination of the agreement; and such other provisions as may be necessary or convenient.

History: En. Sec. 14, Ch. 288, L. 1947; amd. Sec. 1, Ch. 10, L. 1975; R.C.M. 1947, 1-821(a), (b); amd. Sec. 7, Ch. 140, L. 1979.

Cross-References

Joint exercise of powers, 67-11-203.

67-10-205. Joint airport board. (1) Public agencies acting jointly pursuant to 67-10-204 through 67-10-206 shall create a joint board which shall consist of members appointed by the governing body of each participating public agency. Per diem and mileage of such joint board may be set by resolution of the board of county commissioners. The number to be appointed and their term shall be provided for in the joint agreement. Each such joint board shall organize, select officers for terms to be fixed by the agreement, and from time to time adopt and amend rules for its own procedure. The joint board shall have power to plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police any airport or air navigation facility or airport hazard to be jointly acquired, controlled, and operated; and such board may exercise on behalf of its constituent public agencies all the powers of each with respect to such airport, air navigation facility, or airport hazard, subject to the limitations of subsection (2) of this section.

(2) (a) The total expenditures to be made by the joint board for any purpose in any calendar year shall be determined by a budget approved by the governing bodies of its constituent public agencies.

(b) No airport, air navigation facility, airport hazard, or real or personal property, the cost of which is in excess of sums therefor fixed by the joint agreement or allotted in the annual budget, may be acquired by the joint board without the approval of the governing bodies of its constituent public agencies.

(c) Eminent domain proceedings under 67-10-204 through 67-10-206 may be instituted only by authority of the governing bodies of the constituent public agencies of the joint board. If so authorized, such proceedings shall be instituted in the names of the constituent public agencies jointly, and the property so acquired shall be held by said public agencies as tenants in common until conveyed by them to the joint board.

(d) The joint board shall not dispose of any airport, air navigation facility, or real property under its jurisdiction except with the consent of the governing bodies of its constituent public agencies, provided that the joint board may, without such consent, enter into the contract, lease, or other arrangements contemplated by 67-10-302.

(e) Any resolutions, rules, or orders of the joint board dealing with subjects authorized by 67-10-301 shall become effective only upon approval of the governing bodies of the constituent public agencies, provided that upon such approval, the resolutions, rules, or orders of the joint board shall have the same force and effect in the territories or jurisdictions involved as the ordinance, resolutions, rules, or orders of each public agency would have in its own territory or jurisdiction.

History: En. Sec. 14, Ch. 288, L. 1947; amd. Sec. 1, Ch. 10, L. 1975; R.C.M. 1947, 1-821(c), (d).

Cross-References

State airports — acquisition, 67-2-301.

State airports — operation, 67-2-302.

Airport revenue and sale proceeds, 67-10-404.

67-10-206. Joint fund. For the purpose of providing a joint board with moneys for the necessary expenditures in carrying out the provisions of 67-10-204 and 67-10-205, a joint fund shall be created and maintained into which shall be deposited the share of each of the constituent public agencies as provided by the joint agreement. Each of the constituent public agencies shall provide its share of the fund from sources available to each. Any federal, state, or other contributions or loans and the revenues obtained from the joint ownership, control, and operation of any airport or air navigation facility under the jurisdiction of the joint board shall be paid into the joint fund. Disbursements from such fund shall be made by order of the board, subject to the limitations prescribed in 67-10-205(2).

History: En. Sec. 14, Ch. 288, L. 1947; amd. Sec. 1, Ch. 10, L. 1975; R.C.M. 1947, 1-821(e).

67-10-207. Supplementary powers. In addition to the general and special powers conferred by this chapter, every municipality is authorized to exercise powers necessarily incidental to the exercise of such general and special powers.

History: En. Sec. 17, Ch. 288, L. 1947; R.C.M. 1947, 1-824; amd. Sec. 8, Ch. 140, L. 1979.

67-10-208 through 67-10-210 reserved.

67-10-211. Assistance in airport road construction — department of transportation. The department of transportation may, upon written application of the governing body of a municipality, assist the municipality in the location, establishment, construction, reconstruction, maintenance, and improvement of highways and roads to and from municipal airports and field development of them. The department of transportation shall lend its equipment, machinery, technical services, and supervision to the municipality, under agreements made with each municipality.

History: En. Sec. 1, Ch. 120, L. 1939; amd. Sec. 39, Ch. 348, L. 1974; R.C.M. 1947, 1-807; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

General powers of Department of Transportation, 60-2-201.

67-10-212 through 67-10-220 reserved.

67-10-221. Airport property — acquisition by eminent domain. In the acquisition of property by eminent domain proceedings authorized by this chapter, the municipality shall proceed in the manner provided by the laws governing eminent domain of the state of Montana. The municipality is not precluded from abandoning such proceedings in any case where possession of the property has not been taken.

History: En. Sec. 3, Ch. 288, L. 1947; R.C.M. 1947, 1-810; amd. Sec. 9, Ch. 140, L. 1979.

Cross-References

State airports — acquisition, 67-2-301.

Eminent domain, Title 70, ch. 30.

67-10-222. Airport property — disposal. Except as may be limited by the terms and conditions of any grant, loan, or agreement pursuant to 67-10-405, every municipality may by sale, lease, or otherwise dispose of any airport, air navigation facility, or other property or portion thereof or interest therein acquired pursuant to this chapter. Such disposal by sale, lease, or otherwise shall be in accordance with the laws of this state or provisions of the charter of the municipality governing the disposition of other property of the municipality or agency of the state or federal government for aeronautical purposes incident thereto. The sale, lease, or other disposal may be effected in such manner and upon such terms as the governing body of the municipality may consider in the best interest of the municipality.

History: En. Sec. 4, Ch. 288, L. 1947; R.C.M. 1947, 1-811; amd. Sec. 10, Ch. 140, L. 1979.

67-10-223 through 67-10-230 reserved.

67-10-231. No limitation on airport hazard zoning. Nothing contained in this chapter shall be construed to limit any right, power, or authority of a municipality to regulate airport hazards by zoning.

History: En. Sec. 18, Ch. 288, L. 1947; R.C.M. 1947, 1-825; amd. Sec. 11, Ch. 140, L. 1979.

Cross-References

Zoning, Title 67, ch. 6, part 2.

No limitation on airport hazard zoning, 67-11-241.

Municipal zoning, Title 76, ch. 2, part 3.

Part 3
Operation of Airports

67-10-301. Municipal regulation. (1) A municipality which has established or acquired or which may establish or acquire an airport or air navigation facility is authorized to adopt, amend, and repeal such reasonable ordinances, resolutions, rules, and orders as it shall deem necessary for the management, government, and use of such airport or air navigation facility under its control, whether situated within or without the territorial limits of the municipality. For the enforcement thereof, the municipality may, by ordinance or resolution, as may by law be appropriate, appoint airport guards or police with full police powers and fix penalties within the limits prescribed by law for the violation of the ordinances, resolutions, rules, and orders. Said penalties shall be enforced in the same manner in which penalties prescribed by other ordinances or resolutions of the municipality are enforced. To the extent that an airport or other air navigation facility controlled and operated by a municipality is located outside the territorial limits of the municipality, it shall, subject to federal and state laws and rules, be under the jurisdiction and control of the municipality controlling or operating it, and no other municipality shall have any authority to charge or exact a license fee or occupation tax for operations thereon.

(2) All ordinances, resolutions, rules, or orders which are issued by the municipality shall be kept in substantial conformity with the laws of this state or any regulations promulgated or standards established pursuant thereto and, as nearly as may be, with the federal laws governing aeronautics and the rules and standards duly issued thereunder.

History: En. Sec. 8, Ch. 288, L. 1947; R.C.M. 1947, 1-815.

Cross-References

Airport police officers — employment, education, and certification standards — penalty, 7-32-303.

Passenger terminals — fire protection and safety regulations, Title 50, ch. 61, part 1.

Joint airport board acting for municipality, 67-10-205.

Tax exemption, 67-10-406.

67-10-302. Granting of operation and use privileges. (1) In operating an airport or air navigation facility owned, leased, or controlled by a municipality, the municipality may, except as may be limited by the terms and conditions of any grant, loan, or agreement pursuant to 67-10-405, enter into contracts, leases, and other arrangements for a term not exceeding 40 years with any persons:

(a) granting the privilege of using or improving the airport or air navigation facility or any portion or facility of or space in the airport or air navigation facility for commercial purposes;

(b) conferring the privilege of supplying goods, commodities, things, services, or facilities at the airport or air navigation facility; or

(c) making available services to be furnished by the municipality or its agents at the airport or air navigation facility.

(2) In each case, the municipality may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which must be reasonable and uniform for the same class of privilege or service.

(3) Except as may be limited by the terms and conditions of any grant, loan, or agreement pursuant to 67-10-405, a municipality may by contract, lease, or other arrangement, upon a consideration fixed by it, grant to any qualified person for a term not to exceed 40 years the privilege of operating, as agent of the municipality or otherwise, any airport owned or controlled by the municipality; provided that the person may not be granted any authority to operate the airport other than as a public airport or to enter into any contracts, leases, or other arrangements in connection with the operation of the airport which the municipality might not have undertaken under subsections (1) and (2).

History: En. Sec. 5, Ch. 288, L. 1947; R.C.M. 1947, 1-812; amd. Sec. 1, Ch. 268, L. 1993.

Cross-References

Airport all-beverages license, 16-4-208.

Airport all-beverages license fee, 16-4-501.

67-10-303. Delegation of authority. Any authority vested by this chapter in a municipality or in the governing body thereof for the planning, establishment, development, construction, enlargement, improvement, maintenance, equipment, operation, regulation, protection, and policing of airports or other air navigation facilities established, owned, or controlled or to be established, owned, or controlled by the municipality may be vested by resolution of the governing body of the municipality in an officer or board or other municipal agency whose powers and duties must be prescribed in the resolution. However, the expense of such planning, establishment, development, construction, enlargement, improvement, maintenance, equipment, operation, regulation, protection, and policing is a responsibility of the municipality.

History: En. Sec. 7, Ch. 288, L. 1947; R.C.M. 1947, 1-814; amd. Sec. 12, Ch. 140, L. 1979.

Part 4

Finance

67-10-401. Appropriations — taxation. The governing body of any municipality having power to appropriate and raise money is authorized to appropriate, and to raise by taxation or otherwise, sufficient money to carry out the provisions and purposes of this chapter, within the limitations prescribed by law.

History: En. Sec. 9, Ch. 288, L. 1947; R.C.M. 1947, 1-816; amd. Sec. 13, Ch. 140, L. 1979.

Cross-References

General powers of airport authority, 67-11-201.

Municipal tax levy, 67-11-301.

67-10-402. Tax levy. (1) Subject to 15-10-420 and for the purpose of establishing, constructing, equipping, maintaining, and operating airports, landing fields, and ports under the provisions of this chapter and as provided in Title 7, chapter 14, part 11, the county commissioners or the city or town council may each year assess and levy, in addition to the annual levy for general administrative purposes or the all-purpose levy authorized by 7-6-4451 and

7-6-4452, a tax on the dollar of taxable value of the property of said county, city, or town:

(a) not to exceed 2 mills for airports and landing fields; and

(b) not to exceed 2 mills for ports.

(2) In the event of a jointly established airport, landing field, or port, the county commissioners and the council or councils involved shall determine in advance the levy necessary for those purposes and the proportion each political subdivision joining in the venture is required to pay.

(3) Property within any political subdivision may not be subject to a tax pursuant to this section at an annual rate in excess of 2 mills for airports, landing fields, or ports unless it is found that the levy is insufficient for the purposes enumerated. In that case the commissioners and councils are authorized and empowered to contract an indebtedness on behalf of the county, city, or town by borrowing money or issuing bonds for those purposes. However, bonds may not be issued until the proposition has been submitted to the qualified electors and approved by a majority vote, except as provided in subsection (4).

(4) For the purpose of establishing a reserve fund to resurface, overlay, or improve existing runways, taxiways, and ramps, the governing bodies may set up annual reserve funds in their annual budget if:

(a) the reserve is approved by the governing bodies during the normal budgeting procedure;

(b) the necessity to resurface or improve runways by overlays or similar methods every so many years is based upon competent engineering estimates; and

(c) the funds are expended at least within each 10-year period.

(5) The reserve fund may not exceed at any time a competent engineering estimate of the cost of resurfacing or overlaying the existing runways, taxiways, and ramps of any one airport for each fund. The governing body of the airport or port, if in its judgment it considers it advantageous, may invest the fund in any interest-bearing deposits in a state or national bank insured by the FDIC or obligations of the United States of America, either short-term or long-term. Interest earned from the investments must be credited to the operations and maintenance budget of the airport or port governing body. Due to the uniqueness of the subject matter, the provisions of this section are declared necessary in the interests of the public health and safety.

History: En. Sec. 4, Ch. 108, L. 1929; re-en. Sec. 5668.38, R.C.M. 1935; amd. Sec. 4, Ch. 54, L. 1941; amd. Sec. 1, Ch. 54, L. 1945; amd. Sec. 1, Ch. 122, L. 1969; amd. Sec. 16, Ch. 158, L. 1971; amd. Sec. 3, Ch. 501, L. 1973; R.C.M. 1947, 1-804; amd. Sec. 14, Ch. 140, L. 1979; amd. Sec. 1, Ch. 231, L. 1981; amd. Sec. 18, Ch. 456, L. 1985; amd. Sec. 132, Ch. 584, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 584 at beginning of (1) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Cross-References

All-purpose mill levy authorized, 7-6-4451.

Maximum all-purpose mill levy, 7-6-4452.

Limitation on property taxes, Title 15, ch. 10, part 4.

Federal Deposit Insurance Corporation, Title 32, ch. 1, part 6.

Finance, Title 67, ch. 11, part 3.

67-10-403. Liens. To enforce the payment of charges for repairs or improvements to or storage, service, or care of any aircraft or other personal property made or furnished by an airport, person, or entity or an agent of an airport, person, or entity in connection with the operation of an aircraft, airport, or air navigation facility, the airport, person, entity, or agent has a lien on the property, which is enforceable as provided by law.

History: En. Sec. 6, Ch. 288, L. 1947; R.C.M. 1947, 1-813; amd. Sec. 1, Ch. 308, L. 1993.

Cross-References

Liens, Title 71, ch. 3.

67-10-404. Airport revenues and sale proceeds. The revenues obtained by a municipality from the ownership, control, or operation of any airport or air navigation facility, including proceeds from the sale of any airport or portion thereof or air navigation facility property, must be deposited in a special fund to be designated the ".... airport fund", which revenues must be appropriated solely to, and used by the municipality for the purposes authorized by this chapter.

History: En. Sec. 10, Ch. 288, L. 1947; R.C.M. 1947, 1-817; amd. Sec. 15, Ch. 140, L. 1979.

67-10-405. Federal and state money. (1) A municipality may accept, receive, receipt for, disburse, and spend federal and state money and other money, public or private, made available by grant or loan or both to accomplish any of the purposes of this chapter. All federal money accepted under this section must be accepted and spent by the municipality upon terms and conditions prescribed by the United States and consistent with state law. All state money accepted under this section must be accepted and spent by the municipality upon terms and conditions prescribed by the state. Unless otherwise prescribed by the agency from which the money is received, the chief financial officer of the municipality shall on its behalf deposit and keep all money received pursuant to this section in separate funds, designated according to the purposes for which the money is made available, in trust for those purposes.

(2) No application may be made by a municipality for federal aid, as provided in this section, unless the "project application", as defined in the Federal Airport Act of 1946 and regulations of the administrator of civil aeronautics, is first approved by the department.

(3) A municipality may, with the approval and consent of the department, designate the department as its agent to accept, receive, receipt for, and disburse federal and state money and other money, public or private, made available by grant or loan or both to accomplish any of the purposes of this chapter. A municipality may, with the consent of the department, designate the department as its agent in contracting for and supervising the planning, acquisition, development, construction, improvement, or equipment of an airport or other air navigation facility. All contracts made, let, or awarded by the department acting as agent of a municipality under this section must be made, let, or awarded pursuant to the laws governing the making of contracts by or on behalf of the state. The municipality may enter into an agreement with the department providing for payment to the department for services rendered as agent and prescribing the terms and conditions of the agency, in accordance

with terms and conditions prescribed by the United States, if federal money is involved and in accordance with applicable state law. All federal money accepted under this section by the department must be accepted and transferred or spent by the department upon terms and conditions prescribed by the United States. All money received by the department under this subsection must be deposited in the state treasury and, unless otherwise prescribed by the agency from which the money is received, must be kept in separate funds designated according to the purposes for which the money is made available and held by the state in trust for those purposes.

History: En. Sec. 11, Ch. 288, L. 1947; amd. Sec. 41, Ch. 348, L. 1974; R.C.M. 1947, 1-818; amd. Sec. 16, Ch. 140, L. 1979.

Cross-References

Federal aid, 67-2-403.

Airport property — disposal, 67-10-222.

67-10-406. Tax exemption. Any property in this state acquired by a municipality for airport purposes pursuant to the provisions of this chapter and any income derived by such municipality from the ownership, operation, or control thereof is exempt from taxation to the same extent as other property used for public purposes. Any municipality is authorized to exempt from municipal taxation any property acquired within its boundaries by a public agency of another state for airport purposes and any income derived from such property to the extent that such other states authorize similar exemptions from taxation to municipalities of this state.

History: En. Sec. 16, Ch. 288, L. 1947; R.C.M. 1947, 1-823; amd. Sec. 17, Ch. 140, L. 1979.

Cross-References

Tax-exempt property, Title 15, ch. 6, part 2.

CHAPTER 11

AIRPORT AUTHORITIES

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67-11-401. Out-of-state airport jurisdiction — reciprocity.

Chapter Cross-References

Port authorities, Title 7, ch. 14, part 11.

Part 1
Organization and General Provisions

67-11-101. Short title. This chapter may be cited as the "Airport Authorities Act".

History: En. 1-925 by Sec. 24, Ch. 433, L. 1971; R.C.M. 1947, 1-925.

67-11-102. Municipal airport authority. Any municipality may, by resolution of its governing body, create a public body, corporate and politic, to be known as a municipal airport authority which shall be authorized to exercise its functions upon the appointment and qualification of the first commissioners thereof; or the governing body may by resolution determine to exercise any or all powers granted to such authorities in this chapter until or unless such powers are or have been conferred upon a municipal or regional airport authority. Upon the adoption of a resolution creating a municipal airport authority, the governing body of the municipality shall, pursuant to the resolution, appoint not less than five persons as commissioners of the authority. The commissioners who are first appointed shall be designated to serve for terms of 1, 2, 3, 4, and 5 years, respectively, but thereafter each commissioner shall be appointed for a term of 5 years, except that vacancies occurring otherwise than by expiration of the term shall be filled for the unexpired term by the governing body.

History: En. 1-904 by Sec. 4, Ch. 433, L. 1971; amd. Sec. 1, Ch. 57, L. 1975; R.C.M. 1947, 1-904.

67-11-103. Regional airport authority. (1) Two or more municipalities may by joint resolution create a public body, corporate and politic, to be known as a regional airport authority. The resolution creating a regional airport authority shall create a board of not less than five commissioners; the number to be appointed, their term and compensation, if any, shall be provided for in the resolution. Each such regional airport authority shall organize, select officers for terms to be fixed by agreement, and adopt and amend from time to time rules for its own procedure not inconsistent with 67-11-104.

(2) A regional airport authority may be increased from time to time to serve one or more additional municipalities if each additional municipality and each of the municipalities then included in the regional authority and the commissioners of the regional authority, respectively, adopt a joint resolution consenting thereto; provided that if a municipal airport authority for any municipality seeking to be included in the regional authority is then in existence, the commissioners of the municipal authority must consent to the inclusion of the municipality in the regional authority. Upon the inclusion of any municipality in the regional authority, all rights, contracts, obligations, and property, real and personal, of the municipal authority shall be in the name of and vest in the regional authority.

(3) A regional airport authority may be decreased if each of the municipalities then included in the regional authority and the commissioners of the regional authority consent to the decrease and make provisions for the retention or disposition of its assets and liabilities.

(4) A municipality shall not adopt any resolution authorized by this section without a public hearing thereon. Notice thereof shall be given at least 10 days prior thereto in a newspaper published in the municipality or, if there is no newspaper published therein, then in a newspaper having general circulation in the municipality.

(5) For the purpose of this chapter a regional airport authority shall have the same powers as all other political subdivisions in the adoption and enforcement of comprehensive airport zoning regulations as provided for by the laws of this state.

History: En. 1-905, 1-909 by Secs. 5, 8, Ch. 433, L. 1971; R.C.M. 1947, 1-905, 1-909(part).

67-11-104. Commissioners. (1) The powers of each authority shall be vested in the commissioners thereof. A majority of the commissioners of an authority shall constitute a quorum for the purpose of conducting business of the authority and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of not less than a majority of the commissioners present.

(2) There shall be elected a chairman and vice-chairman from among the commissioners. An authority may employ an executive director, secretary, technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require and shall determine their qualifications, duties, and compensation. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper.

(3) A commissioner of an authority shall be entitled to the necessary expense, including travel expenses, as provided for in 2-18-501 through 2-18-503, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. The certificates of the appointment and reappointment of commissioners shall be filed with the authority.

History: En. 1-908 by Sec. 7, Ch. 433, L. 1971; amd. Sec. 4, Ch. 439, L. 1975; R.C.M. 1947, 1-908.

67-11-105. Functions — public and governmental. The acquisition of any land or interest therein, pursuant to this chapter; the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, and protection of airports and air navigation facilities, including the acquisition or elimination of airport hazards, and the exercise of any powers herein granted to authorities and other public agencies to be severally or jointly exercised are hereby declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity. All land and other property and privileges acquired and used by or on behalf of any authority or other public agency in the manner and for the purposes enumerated in this chapter shall and are hereby declared to be acquired and used for public and governmental purposes and as a matter of public necessity.

History: En. 1-919 by Sec. 18, Ch. 433, L. 1971; R.C.M. 1947, 1-919.

67-11-106. Cooperation of municipality. For the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of airports and air navigation facilities pursuant to the provisions of this chapter, any municipality for which an authority has been created upon such terms, with or without consideration, as it may determine, may:

(1) lend or donate money to the authority;

(2) provide that all or a portion of the taxes or funds available or to become available to or required by law to be used by the municipality for airport purposes be transferred or paid directly to the airport authority as such funds become available to the municipality;

(3) cause water, sewer, or drainage facilities or any other facilities which it is empowered to provide to be furnished adjacent to or in connection with such airports or air navigation facilities;

(4) dedicate, sell, convey, or lease any of its interest in any property or grant easements, licenses, or any other rights or privileges therein to the authority;

(5) furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, and walks from established streets or roads to such airports or air navigation facilities;

(6) do any and all things, whether or not specifically authorized in this section and not otherwise prohibited by law, that are necessary or convenient to aid and cooperate with the authority in the planning, undertaking, construction, or operation of airports and air navigation facilities; and

(7) enter into agreements with the authority respecting action to be taken by the municipality pursuant to the provisions of this section.

History: En. 1-921 by Sec. 20, Ch. 433, L. 1971; R.C.M. 1947, 1-921.

Cross-References

Municipal tax levy, 67-11-301.

Part 2
Powers

67-11-201. General powers of authority. An authority has all the powers necessary or convenient to carry out the purposes of this chapter, including, subject to 15-10-420, the power to certify annually to the governing bodies creating it the amount of tax to be levied by the governing bodies for airport purposes and including but not limited to the power to:

(1) sue and be sued, have a seal, and have perpetual succession;

(2) execute contracts and other instruments and take such other action as may be necessary or convenient to carry out the purposes of this chapter;

(3) plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities, within this state and within any adjoining state, including the acquisition, construction, installation, equipment, maintenance, and operation at the airports or buildings and other facilities for the servicing of aircraft or for comfort and accommodation of air travelers and the purchase and sale of supplies, goods, and commodities that are incident to the operation of its airport properties. For the authorized purposes, an authority may, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, acquire property, real or personal, or any interest in property, including easements in airport hazards or land outside the boundaries of an airport or airport site, that is necessary to permit the removal, elimination, obstruction-marking, or obstruction-lighting of airport hazards or to prevent the establishment of airport hazards.

(4) establish comprehensive airport zoning regulations in accordance with the laws of this state;

(5) acquire, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, existing airports and air navigation facilities; provided, however, an authority may not acquire or take over any airport or air navigation facility owned or controlled by another authority, a municipality, or public agency of this or any other state without the consent of the authority, municipality, or public agency;

(6) establish or acquire and maintain airports in, over, and upon any public waters of this state or any submerged lands under public waters, provided that the authority has obtained the approval of the owner or agency that controls the water, and construct and maintain terminal buildings, landing floats, causeways, roadways, and bridges for approaches to or connecting with any airport and landing floats and breakwaters for the protection of the airport.

History: En. 1-909 by Sec. 8, Ch. 433, L. 1971; R.C.M. 1947, 1-909(part); amd. Sec. 133, Ch. 584, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 584 in introduction inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Cross-References

Limitation on property taxes, Title 15, ch. 10, part 4.

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

Airport easements, 67-2-301(3).

General municipal powers, 67-10-201.

Airport property — acquisition by eminent domain, 67-11-231.

Out-of-state airport jurisdiction — reciprocity, 67-11-401.

67-11-202. Rules. An authority is authorized to adopt, amend, and repeal such reasonable resolutions, rules, and orders as it shall deem necessary for the management, government, and use of any airport or air navigation facility owned by it or under its control. No rule, order, or standard prescribed by the commission shall be inconsistent with or contrary to any act of the congress of the United States or any regulation promulgated or standard established pursuant thereto. The authority shall keep on file at the principal office of the authority for public inspection a copy of all its rules.

History: En. 1-914 by Sec. 13, Ch. 433, L. 1971; R.C.M. 1947, 1-914.

67-11-203. Joint exercise of powers. (1) For the purposes of 67-11-203 through 67-11-205, unless otherwise qualified, the term "public agency" includes municipality and authority, each as defined in this title; any agency of the state government and of the United States; and any municipality, political subdivision, or agency of an adjoining state. The term "governing body" includes commissioners of an authority, the governing body of a municipality, and the head of an agency of a state or the United States if the public agency is other than an authority or municipality.

(2) All powers, privileges, and authority granted by this chapter may be exercised and enjoyed by an authority jointly with any public agency of this state and jointly with any public agency of any adjoining state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government, when acting jointly with any authority, may exercise and enjoy all the powers, privileges, and authority conferred by this chapter upon an authority.

(3) Any two or more public agencies may enter into agreements with each other for joint action pursuant to the provisions of 67-11-203 through 67-11-205. Each agreement shall specify its duration; the proportionate interest which each public agency will have in the property, facilities, and privileges involved in the joint undertaking; the proportion of costs of operation, capital outlay, and maintenance to be borne by each public agency; and such other terms as are considered necessary or required by law. The agreement may also provide for amendments and termination; disposal of all or any of the property, facilities, and privileges jointly owned prior to or at such times as the property, facilities, and privileges or any part thereof cease to be used for the purposes provided in this chapter or upon termination of the agreement; the distribution of the proceeds received upon any disposal and of any funds or other property jointly owned and undisposed of; the assumption of payment of any indebtedness arising from the joint undertaking which remains unpaid upon the disposal of all assets or upon a termination of the agreement; and such other provisions as may be necessary or convenient.

History: En. 1-918 by Sec. 17, Ch. 433, L. 1971; amd. Sec. 8, Ch. 232, L. 1977; R.C.M. 1947, 1-918(1), (2).

Cross-References

Municipal airports — joint exercise of powers, 67-10-204.

67-11-204. Joint board. (1) Public agencies acting jointly pursuant to 67-11-203 through 67-11-205 shall create a joint board which shall consist of members appointed by the governing body of each participating public agency. The number to be appointed and their term and compensation, if any, shall be provided for in the joint agreement. Each joint board shall organize, select officers for such terms as are fixed by the agreement, and adopt and amend from time to time rules for its own procedure. The joint board, as agent of the participating public agencies, may plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police any airport or air navigation facility or airport hazard to be jointly acquired, controlled, and operated; and the board may be authorized by the participating public agencies to exercise on behalf of its constituent public agencies all the powers of each with respect to the airport, air navigation facility, or airport hazard, subject to the limitations of subsection (2) of this section.

(2) (a) The total expenditures to be made by the joint board for any purpose in any calendar year shall be as determined by a budget approved by the constituent public agencies on or before the preceding June 10 or as otherwise specifically authorized by the constituent public agencies.

(b) No airport, air navigation facility, airport hazard, or real or personal property, the cost of which is in excess of sums fixed therefor by the joint agreement or allotted in the annual budget, may be acquired, established, or developed by the joint board without the approval of the governing bodies of its constituent public agencies.

(c) Eminent domain proceedings under 67-11-203 through 67-11-205 may be instituted by the joint board only by authority of the governing bodies of the constituent public agencies of the joint board. If so authorized, such proceedings shall be instituted in the names of the constituent public agencies jointly, and the property so acquired shall be held by the public agencies as tenants in common.

(d) The joint board may not dispose of any airport, air navigation facility, or real property under its jurisdiction except with the consent of the governing bodies of its constituent public agencies. However, the joint board may, without such consent, enter into contracts, leases, or other arrangements contemplated by 67-11-211.

(e) Resolutions, rules, or orders of the joint board dealing with subjects authorized by 67-11-211 become effective only upon approval of the governing bodies of the constituent public agencies. However, upon such approval, the resolutions, rules, or orders of the joint board shall have the same force in the territories or jurisdictions involved as the ordinances, resolutions, rules, or orders of each public agency would have in its own territory or jurisdiction.

History: En. 1-918 by Sec. 17, Ch. 433, L. 1971; amd. Sec. 8, Ch. 232, L. 1977; R.C.M. 1947, 1-918(3), (4).

67-11-205. Joint fund. For the purpose of providing the joint board with moneys for the necessary expenditures in carrying out the provisions of 67-11-203 through 67-11-205, a joint fund shall be created and maintained, into which shall be deposited the share of each of the constituent public agencies as provided by the joint agreement. Any federal, state, or other grants, contributions, or loans and the revenues obtained from the joint ownership, control, and operation of any airport or air navigation facility under the jurisdiction of the joint board shall be paid into the joint fund. Disbursements from such fund shall be made by order of the board, subject to the limitations prescribed in 67-11-204(2).

History: En. 1-918 by Sec. 17, Ch. 433, L. 1971; amd. Sec. 8, Ch. 232, L. 1977; R.C.M. 1947, 1-918(5).

67-11-206. Supplementary powers. In addition to the general and special powers conferred by this chapter, every authority is authorized to exercise such powers as are necessary incidental to the exercise of such general and special powers.

History: En. 1-923 by Sec. 22, Ch. 433, L. 1971; R.C.M. 1947, 1-923.

67-11-207 through 67-11-210 reserved.

67-11-211. Granting of operation and use privileges. (1) In connection with the operation of an airport or air navigation facility owned or controlled by an authority, the authority may enter into contracts, leases, and other arrangements for terms not to exceed 40 years with any persons:

(a) granting the privilege of using or improving the airport or air navigation facility or any portion or facility of or space in the airport or air navigation facility for commercial purposes;

(b) conferring the privilege of supplying goods, commodities, things, services, or facilities at the airport or air navigation facility; and

(c) making available services to be furnished by the authority or its agents at the airport or air navigation facility.

(2) In each case, the authority may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which must be reasonable and uniform for the same class of privilege or service; provided that the public may not be deprived of its rightful, equal, and uniform use of the airport, air navigation facility, or portion or facility of the airport or air navigation facility.

(3) Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by 67-11-305, an authority may by contract, lease, or other arrangement, upon a consideration fixed by it, grant to any qualified person for a term not to exceed 40 years the privilege of operating, as agent of the authority or otherwise, any airport owned or controlled by the authority; provided that a person may not be granted any authority to operate an airport other than as a public airport or to enter into any contracts, leases, or other arrangements in connection with the operation of the airport which the authority might not have undertaken under subsections (1) and (2).

History: En. 1-913 by Sec. 12, Ch. 433, L. 1971; R.C.M. 1947, 1-913; amd. Sec. 18, Ch. 140, L. 1979; amd. Sec. 2, Ch. 268, L. 1993.

Cross-References

Airport police officers — employment, education, and certification standards, 7-32-303.

Airport all-beverages license, 16-4-208.

Airport all-beverages license fee, 16-4-501.

Passenger terminals — fire protection and safety regulations, Title 50, ch. 61, part 1.

67-11-212 through 67-11-220 reserved.

67-11-221. Exercise of airport authority powers by department — exceptions. The department shall have all powers of an airport authority, except powers to certify or levy taxes or issue bonds, for constructing and operating public airports or landing fields near international border ports of entry and near state or national parks or near or in recreational areas as the department may determine to be in the public interest.

History: En. 1-902 by Sec. 2, Ch. 433, L. 1971; amd. Sec. 43, Ch. 348, L. 1974; R.C.M. 1947, 1-902.

67-11-222. Department control of airport operation and income. The department may control the operation of airports constructed under the provisions of 67-11-221 and may provide for the imposition of landing fees, granting of fuel and service concessions, or the lease of portions of the premises for other related airport services or for purposes not inconsistent with the use of the premises for airport purposes. All income from the operation of such airports shall be deposited in the state treasury in the airport operating account within the enterprise fund. All expenditures from the account shall be within the limits of legislative appropriations and shall be made upon vouchers signed and approved by the director of the department.

History: En. 1-903 by Sec. 3, Ch. 433, L. 1971; amd. Sec. 44, Ch. 348, L. 1974; amd. Sec. 6, Ch. 232, L. 1977; R.C.M. 1947, 1-903; amd. Sec. 3, Ch. 277, L. 1983.

67-11-223 through 67-11-230 reserved.

67-11-231. Airport property — acquisition by eminent domain. In the acquisition of property by eminent domain proceedings authorized by this chapter, an airport authority shall proceed in the manner provided by the laws of this state and such other laws that may now or hereafter apply to the state or to political subdivisions of this state in exercising the right of eminent domain. The municipality shall not be precluded from abandoning such proceedings in any case where possession of the property has not been taken.

History: En. 1-910 by Sec. 9, Ch. 433, L. 1971; R.C.M. 1947, 1-910.

Cross-References

Acquisition of landing fields and parking areas for aircraft, 7-14-4801.

Eminent domain, Title 70, ch. 30.

67-11-232. Airport property — disposal. Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by 67-11-305, an authority may, by sale, lease, or otherwise, dispose of any airport, air navigation facility, or other property or portion of or interest in an airport or facility acquired pursuant to this chapter. The disposal by sale, lease, or otherwise must be in accordance with the adopted rules of the authority, which rules must be approved by the local governing body, for the disposal of county property, except that in the case of disposal to another authority, a municipality, or an agency of the state or federal government for use and operation as a public airport, the sale, lease, or other disposal may be effected in a manner and upon terms as the commissioners of the authority consider to be in the best interest of civil aviation.

History: En. 1-911 by Sec. 10, Ch. 433, L. 1971; R.C.M. 1947, 1-911; amd. Sec. 6, Ch. 279, L. 1993.

67-11-233 through 67-11-240 reserved.

67-11-241. No limitation on airport hazard zoning. Nothing contained in this chapter shall be construed to limit any right, power, or authority of a municipality to regulate airport hazards by zoning.

History: En. 1-924 by Sec. 23, Ch. 433, L. 1971; R.C.M. 1947, 1-924.

Cross-References

Municipal zoning, Title 76, ch. 2, part 3.

Part 3
Finance

67-11-301. Municipal tax levy. The airport authority may certify annually to the governing bodies the amount of tax to be levied by each municipality participating in the creation of the airport authority, and subject to 15-10-420, the municipality shall levy the amount certified, pursuant to provisions of law authorizing cities and other political subdivisions of this state to levy taxes for airport purposes. The levy may not exceed the maximum levy permitted by the laws of this state for airport purposes or any lower limit that may have been established by the municipality or municipalities in the resolution creating the authority. The municipality shall collect the taxes certified by an airport authority in the same manner as other taxes are levied and collected and make payment to the airport authority. The proceeds of the taxes when and as paid to the airport authority must be deposited in a special account or accounts in which other revenue of the authority are deposited and may be expended by the authority as provided for in this chapter. Prior to the issuance of bonds under 67-11-303, the airport authority or the municipality may by resolution covenant and agree that the total amount of the taxes then authorized by law or the portion of the taxes as may be specified by the resolution will, subject to 15-10-420, be certified, levied, and deposited annually until the bonds and interest are fully paid.

History: En. 1-916 by Sec. 15, Ch. 433, L. 1971; amd. Sec. 2, Ch. 501, L. 1973; R.C.M. 1947, 1-916; amd. Sec. 134, Ch. 584, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 584 in two places inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Cross-References

Municipal taxation, Title 7, ch. 6, part 44.

Limitation on property taxes, Title 15, ch. 10, part 4.

67-11-302. County tax levy. Subject to 15-10-420, in counties supporting airports or airport authorities, a levy as provided for in 67-10-402 may be made for airport authority purposes.

History: En. 1-917 by Sec. 16, Ch. 433, L. 1971; R.C.M. 1947, 1-917; amd. Sec. 135, Ch. 584, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 584 inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Cross-References

County taxation, Title 7, ch. 6, part 25.

67-11-303. Bonds and obligations. (1) An authority may borrow money for any of its corporate purposes and issue its bonds for those purposes, including refunding bonds, in the form and upon the terms that it may determine, payable out of any revenue of the authority, including revenue derived from:

(a) an airport or air navigation facility or facilities;

(b) taxes levied pursuant to 67-11-301 or other law for airport purposes;

(c) grants or contributions from the federal government; or

(d) other sources.

(2) The bonds may be issued by resolution of the authority, without an election and without any limitation of amount, except that bonds may not be issued at any time if the total amount of principal and interest to become due in any year on the bonds and on any then outstanding bonds for which revenue from the same source or sources are pledged exceeds the amount of revenue to be received in that year as estimated in the resolution authorizing the issuance of the bonds. The authority shall take all action necessary and possible to

impose, maintain, and collect rates, charges, rentals, and taxes, if any are pledged, sufficient to make the revenue from the pledged source in the year at least equal to the amount of principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102. Except as otherwise provided in this section, any bonds issued pursuant to this chapter by an authority may be payable as to principal and interest solely from revenue of the authority and must state on their face the applicable limitations or restrictions regarding the source from which the principal and interest are payable.

(4) Bonds issued by an authority or municipality pursuant to the provisions of this chapter are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of 15-30-111(2)(a).

(5) For the security of bonds, the authority or municipality may by resolution make and enter into any covenant, agreement, or indenture and may exercise any additional powers authorized to be exercised by a municipality under Title 7, chapter 7, parts 44 and 45. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from any revenues referred to in this chapter, prior to the payment of current costs of operation and maintenance of the facilities.

(6) Subject to the conditions stated in this subsection, the governing body of any municipality having a population in excess of 10,000, with respect to bonds issued pursuant to this chapter by the municipality or by an authority in which the municipality is included, may by resolution covenant that in the event that at any time all revenue, including taxes, appropriated and collected for the bonds is insufficient to pay principal or interest then due, it will levy a general tax upon all of the taxable property in the municipality for the payment of the deficiency. The governing body may further covenant that at any time a deficiency is likely to occur within 1 year for the payment of principal and interest due on such bonds, it will levy a general tax upon all the taxable property in the municipality for the payment of the deficiency, and the taxes are not subject to any limitation of rate or amount applicable to other municipal taxes but are limited to a rate estimated to be sufficient to produce the amount of the deficiency. In the event that more than one municipality having a population in excess of 10,000 is included in an authority issuing bonds pursuant to this chapter, the municipalities may apportion the obligation to levy taxes for the payment of, or in anticipation of, a deficiency in the revenue appropriated for the bonds in a manner that the municipalities may determine. The resolution must state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies. A resolution may not be effective until the question of its approval has been submitted to the qualified electors of the municipality at a special election called for that purpose by the governing body of the municipality and a majority of the electors voting on the question have voted in favor of the resolution. The special election must be held in conjunction with a regular or primary election. The notice and conduct of the election is governed, to the extent applicable, as provided for municipal general obligation bonds in Title 7, chapter 7, part 42, for an election called by cities and towns and as provided for county general obligation bonds in Title 7, chapter 7, part 22, for an election called by counties. If a majority of the

electors voting on the issue vote against approval of the resolution, the municipality may not make the covenant or levy a tax for the payment of deficiencies pursuant to this section, but the municipality or authority may issue bonds under this chapter payable solely from the sources referred to in subsection (1).

History: En. 1-912 by Sec. 11, Ch. 433, L. 1971; amd. Sec. 1, Ch. 501, L. 1973; amd. Sec. 7, Ch. 232, L. 1977; R.C.M. 1947, 1-912; amd. Sec. 19, Ch. 140, L. 1979; amd. Sec. 15, Ch. 500, L. 1981; amd. Sec. 179, Ch. 575, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 128, Ch. 370, L. 1987; amd. Sec. 67, Ch. 387, L. 1995.

Cross-References

Debt management, Title 7, ch. 7.

67-11-304. Reserve fund. An airport authority may create a reserve fund for the use, repairs, maintenance, and capital outlays of an airport.

History: En. 1-906 by Sec. 6, Ch. 433, L. 1971; amd. Sec. 1, Ch. 86, L. 1975; R.C.M. 1947, 1-906; amd. Sec. 29, Ch. 281, L. 1983; amd. Sec. 7, Ch. 279, L. 1993.

67-11-305. Federal and state money. (1) An authority may accept, receive, receipt for, and spend federal and state moneys and other moneys, public or private, made available by grant or loan, to accomplish any of the purposes of this chapter. All federal moneys accepted under this section shall be accepted and spent by the authority upon terms and conditions prescribed by the United States and consistent with state law. All state moneys accepted under this section shall be accepted and spent by the authority upon terms and conditions prescribed by the state.

(2) An authority may designate the department as its agent to accept, receive, receipt for, and disburse federal and state moneys and other moneys, public or private, made available by grant or loan, to accomplish in whole or in part any of the purposes of this chapter and may designate the department as its agent in contracting for and supervising the planning, acquisition, development, construction, improvement, maintenance, equipment, or operation of any airport or other air navigation facility. An authority may enter into an agreement with the department prescribing the terms and conditions of the agency in accordance with terms and conditions prescribed by the United States, if federal money is involved, and in accordance with the applicable laws of this state. All federal moneys accepted under this section by the department shall be accepted and transferred or spent by the department upon terms and conditions prescribed by the United States. All moneys received by the department under this subsection shall be deposited in the state treasury and, unless otherwise prescribed by the agency from which the moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available and held by the state in trust for those purposes.

History: En. 1-915 by Sec. 14, Ch. 433, L. 1971; amd. Sec. 45, Ch. 348, L. 1974; R.C.M. 1947, 1-915.

Cross-References

Airport property — disposal, 67-11-232.

67-11-306. Tax exemption. Any property in this state acquired by an authority for airport purposes, pursuant to the provisions of this chapter, and any income derived by the authority from the ownership, operation, or control of the property is exempt from taxation and any other charges to the same extent as other property used for public purpose.

History: En. 1-920 by Sec. 19, Ch. 433, L. 1971; R.C.M. 1947, 1-920; amd. Sec. 3, Ch. 268, L. 1993.

Cross-References

Tax-exempt property, Title 15, ch. 6, part 2.

Municipal airports — tax exemption, 67-10-406.

Part 4
Extraterritorial Airports

67-11-401. Out-of-state airport jurisdiction — reciprocity. (1) This section may be cited as the "Extraterritorial Airports Section".

(2) For the purpose of this section, "governmental agency" means any municipality, city, town, county, public corporation, or other public agency.

(3) This state or any governmental agency of this state having any powers with respect to planning, establishing, acquiring, developing, constructing, enlarging, improving, maintaining, equipping, operating, regulating, or protecting airports or air navigation facilities within this state may exercise those powers within any state or jurisdiction adjoining this state, subject to the laws of that state or jurisdiction.

(4) Any state adjoining this state or any governmental agency thereof may plan, establish, acquire, develop, construct, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities within this state, subject to the laws of this state applicable to airports and air navigation facilities. The adjoining state or governmental agency shall have the power of eminent domain in this state, which shall be exercised in the manner provided by the laws of this state governing condemnation proceedings, provided that the power of eminent domain shall not be exercised unless the adjoining state authorizes the exercise of that power therein by this state or any governmental agency thereof having any of the powers mentioned in this section.

(5) The powers granted in this section may be exercised jointly by two or more states or governmental agencies, including this state and its governmental agencies, in such combination as may be agreed upon by them.

History: En. 1-922 by Sec. 21, Ch. 433, L. 1971; R.C.M. 1947, 1-922.

Cross-References

General powers of authority — establishment of facilities within adjoining state, 67-11-201.

TITLE 68

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